

1 *Lee Wells* House BILL NO. 482 *Hargrove*
 2 INTRODUCED BY *Lee Wells* *Hargrove* *Stead* *Boyer*
 3 *Repplein* *Brainard* *Green* *Simkins* *Stovall* *Masold*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION
 5 FOR A MINOR OR INCOMPETENT PERSON; PROVIDING A JUDICIAL WAIVER OF NOTIFICATION;
 6 PROVIDING PENALTIES; AMENDING SECTION 41-1-405, MCA, AND REPEALING SECTION 50-20-107,
 7 MCA. *Harless* *Vict* *ORR* *Smith* *Bergman* *Tweit* *Anderson* *Feuteny*
 8 *Kasten* *Mohr* *Ahner* *Nettel* *Maced* *Curran* *Emerson*

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

11 NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Parental Notice of Abortion Act".

14 NEW SECTION. Section 2. Legislative purpose and findings. (1) The legislature finds that:

- 15 (a) immature minors often lack the ability to make fully informed choices that take into account
- 16 both immediate and long-range consequences;
- 17 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious and
- 18 can be lasting, particularly when the patient is immature;
- 19 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom
- 20 of an abortion are not necessarily related;
- 21 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's
- 22 best medical judgment concerning the minor;
- 23 (e) parents who are aware that their minor daughter has had an abortion may better ensure that
- 24 the daughter receives adequate medical care after the abortion; and
- 25 (f) parental consultation is usually desirable and in the best interests of the minor.

26 (2) The purpose of [sections 1 through 10] is to further the important and compelling state interests
27 of:

- 28 (a) protecting minors against their own immaturity;
- 29 (b) fostering family unity and preserving the family as a viable social unit;
- 30 (c) protecting the constitutional rights of parents to rear children who are members of their



1 household; and

2 (d) reducing teenage pregnancy and unnecessary abortion.

3

4 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], unless the context
5 requires otherwise, the following definitions apply:

6 (1) "Actual notice" means the giving of notice directly in person or by telephone.

7 (2) "Coercion" means restraining or dominating the choice of a minor female by force, threat of
8 force, or deprivation of food and shelter.

9 (3) "Emancipated minor" means a person under 18 years of age who is or has been married or who
10 has been granted an order of limited emancipation by a court as provided in 41-3-406.

11 (4) "Incompetent person" means a person who is an incapacitated person or a protected person
12 who has had a guardian appointed pursuant to Title 72, chapter 5.

13 (5) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical
14 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate
15 abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in
16 treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

17 (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian
18 on a child.

19 (7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

20 (8) "Sexual abuse" has the meaning given in 41-3-102.

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22 **NEW SECTION. Section 4. Notice of parent required.** A physician may not perform an abortion
23 upon a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to
24 one parent or to the legal guardian of the pregnant minor or incompetent person of the physician's intention
25 to perform the abortion. The actual notice may be given by a referring physician. The physician who
26 performs the abortion must receive the written statement of the referring physician certifying that the
27 referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the
28 physician or the physician's agent shall give alternate notice as provided in [section 5].

29

30 **NEW SECTION. Section 5. Alternate notification.** In lieu of the actual notice required by [section

1 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the
2 parent with return receipt requested and delivery restricted to the addressee, which means a postal
3 employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur
4 at noon on the next day on which regular mail delivery takes place after mailing.

5
6 **NEW SECTION. Section 6. Exceptions.** Notice is not required under [section 4 or 5] if:

7 (1) the attending physician certifies in the patient's medical record that a medical emergency exists
8 and there is insufficient time to provide notice;

9 (2) notice is waived, in writing, by the person entitled to notice; or

10 (3) notice is waived under [section 9].
11

12 **NEW SECTION. Section 7. Coercion prohibited.** A parent, a guardian, or any other person may
13 not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents,
14 guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered
15 an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance
16 benefits may not be used to obtain an abortion.
17

18 **NEW SECTION. Section 8. Reports.** A monthly report indicating the number of notices issued
19 under [sections 1 through 10] and the number of times in which exceptions were made to the notice
20 requirement under [section 6], as well as the type of exceptions, must be filed with the department of
21 health and environmental sciences on forms prescribed by the department. Patient names may not be used
22 on the forms. The department shall prepare and make available to the public on an annual basis a
23 compilation of the data reported.
24

25 **NEW SECTION. Section 9. Procedure for judicial waiver of notice.** (1) The requirements and
26 procedures under this section are available to minors and incompetent persons whether or not they are
27 residents of this state.

28 (2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice
29 requirement and may participate in the proceedings on the person's own behalf. The petition must include
30 a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad

1 litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings.
2 The youth court shall advise the petitioner of the right to court-appointed counsel and shall provide the
3 petitioner with counsel upon request.

4 (b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the
5 youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part
6 2, apply to an investigation conducted pursuant to this subsection.

7 (3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner.
8 All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym
9 or using the petitioner's initials. All documents related to the petition are confidential and are not available
10 to the public. The proceedings on the petition must be given preference over other pending matters to the
11 extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings
12 of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time
13 is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not
14 extended, the petition is granted and the notice requirement is waived.

15 (4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to
16 decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the
17 performance or inducement of an abortion without the notification of a parent or guardian.

18 (5) The court shall issue an order authorizing the petitioner to consent to an abortion without the
19 notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

20 (a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one
21 or both parents, a guardian, or a custodian; or

22 (b) the notification of a parent or guardian is not in the best interests of the petitioner.

23 (6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss
24 the petition.

25 (7) A court that conducts proceedings under this section shall issue written and specific findings
26 of fact and conclusions of law supporting its decision and shall order that a confidential record of the
27 evidence, findings, and conclusions be maintained.

28 (8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner
29 if the youth court denies a petition. An order authorizing an abortion without notice is not subject to
30 appeal.

1 (9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of
2 parental notification or appeals a denial of a petition.

3
4 **NEW SECTION. Section 10. Criminal and civil penalties.** (1) A person convicted of performing
5 an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed \$500 or be imprisoned
6 in the county jail for a term not to exceed 6 months, or both.

7 (2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an
8 appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues
9 other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure
10 to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice
11 is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 10] do not
12 limit the common-law rights of parents.

13 (3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon
14 conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not
15 to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not
16 less than \$500 and not more than \$50,000 and be imprisoned in the state prison for a term not less than
17 10 days and not more than 5 years, or both.

18 (4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as
19 provided in [section 6(2)] is guilty of a misdemeanor.

20
21 **Section 11.** Section 41-1-405, MCA, is amended to read:

22 **"41-1-405. Emergencies and special situations.** (1) ~~Any~~ A health professional may render or
23 attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without
24 compensation, to any injured person or any person regardless of age who is in need of immediate health
25 care when, in good faith, the professional believes that the giving of aid is the only alternative to probable
26 death or serious physical or mental damage.

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

30 (3) ~~No consent shall~~ Consent may not be required of ~~any~~ a minor who does not possess the mental

1 capacity or who has a physical disability ~~which~~ that renders ~~him~~ the minor incapable of giving ~~his~~ consent
2 and who has no known relatives or legal guardians, if a physician determines that the health service should
3 be given.

4 (4) Self-consent of minors ~~shall~~ does not apply to sterilization or abortion, except as provided in
5 [sections 1 through 10]."

6
7 **NEW SECTION. Section 12. Right of intervention.** Pursuant to Rule 24(a), Montana Rules of Civil
8 Procedure, a legislator has the right to intervene in any case in which the constitutionality of Title 50,
9 chapter 20, is challenged.

10
11 **NEW SECTION. Section 13. Repealer.** Section 50-20-107, MCA, is repealed.

12
13 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 10] are intended to be
14 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to
15 [sections 1 through 10].

16
17 **NEW SECTION. Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21 -END-

1 *Lee Wells* House BILL NO. 482 *Hargrove*
 2 INTRODUCED BY *Lee Wells* *Hargrove* *Stoddard* *Johnson*
 3 *Reid* *Brainard* *Green* *Simmons* *Stoddard* *Masolo*
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 7 MCA. *Harling* *ORR* *Smith* *Bergman* *Tweitt* *Anderson* *Featuring*
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- 24 the daughter receives adequate medical care after the abortion; and
- 25 (f) parental consultation is usually desirable and in the best interests of the minor.

26 (2) The purpose of [sections 1 through 10] is to further the important and compelling state interests
27 of:

- 28 (a) protecting minors against their own immaturity;
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10 has been granted an order of limited emancipation by a court as provided in 41-3-406.

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8 and there is insufficient time to provide notice;

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20 requirement under [section 6], as well as the type of exceptions, must be filed with the department of
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22 on the forms. The department shall prepare and make available to the public on an annual basis a
23 compilation of the data reported.
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25 **NEW SECTION. Section 9. Procedure for judicial waiver of notice.** (1) The requirements and
26 procedures under this section are available to minors and incompetent persons whether or not they are
27 residents of this state.

28 (2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice
29 requirement and may participate in the proceedings on the person's own behalf. The petition must include
30 a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad

1 item for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings.
2 The youth court shall advise the petitioner of the right to court-appointed counsel and shall provide the
3 petitioner with counsel upon request.

4 (b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the
5 youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part
6 2, apply to an investigation conducted pursuant to this subsection.

7 (3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner.
8 All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym
9 or using the petitioner's initials. All documents related to the petition are confidential and are not available
10 to the public. The proceedings on the petition must be given preference over other pending matters to the
11 extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings
12 of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time
13 is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not
14 extended, the petition is granted and the notice requirement is waived.

15 (4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to
16 decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the
17 performance or inducement of an abortion without the notification of a parent or guardian.

18 (5) The court shall issue an order authorizing the petitioner to consent to an abortion without the
19 notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

20 (a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one
21 or both parents, a guardian, or a custodian; or

22 (b) the notification of a parent or guardian is not in the best interests of the petitioner.

23 (6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss
24 the petition.

25 (7) A court that conducts proceedings under this section shall issue written and specific findings
26 of fact and conclusions of law supporting its decision and shall order that a confidential record of the
27 evidence, findings, and conclusions be maintained.

28 (8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner
29 if the youth court denies a petition. An order authorizing an abortion without notice is not subject to
30 appeal.

1 (9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of
2 parental notification or appeals a denial of a petition.

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4 **NEW SECTION. Section 10. Criminal and civil penalties.** (1) A person convicted of performing
5 an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed \$500 or be imprisoned
6 in the county jail for a term not to exceed 6 months, or both.

7 (2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an
8 appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues
9 other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure
10 to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice
11 is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 10] do not
12 limit the common-law rights of parents.

13 (3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon
14 conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not
15 to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not
16 less than \$500 and not more than \$50,000 and be imprisoned in the state prison for a term not less than
17 10 days and not more than 5 years, or both.

18 (4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as
19 provided in [section 6(2)] is guilty of a misdemeanor.

20
21 **Section 11.** Section 41-1-405, MCA, is amended to read:

22 **"41-1-405. Emergencies and special situations.** (1) ~~Any~~ A health professional may render or
23 attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without
24 compensation, to any injured person or any person regardless of age who is in need of immediate health
25 care when, in good faith, the professional believes that the giving of aid is the only alternative to probable
26 death or serious physical or mental damage.

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28 that will endanger the health or life of the minor if services would be delayed by obtaining consent from
29 spouse, parent, parents, or legal guardian.

30 (3) ~~No consent shall~~ Consent may not be required of any a minor who does not possess the mental

1 capacity or who has a physical disability ~~which~~ that renders ~~him~~ the minor incapable of giving ~~his~~ consent
2 and who has no known relatives or legal guardians, if a physician determines that the health service should
3 be given.

4 (4) Self-consent of minors ~~shall~~ does not apply to sterilization or abortion, except as provided in
5 [sections 1 through 10]."

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7 NEW SECTION. Section 12. Right of intervention. Pursuant to Rule 24(a), Montana Rules of Civil
8 Procedure, a legislator has the right to intervene in any case in which the constitutionality of Title 50,
9 chapter 20, is challenged.

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13 NEW SECTION. Section 14. Codification instruction. [Sections 1 through 10] are intended to be
14 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to
15 [sections 1 through 10].

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17 NEW SECTION. Section 15. Severability. If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21

-END-

1 HOUSE BILL NO. 482

2 INTRODUCED BY GRIMES, MARTINEZ, ESTRADA, BAER, HARGROVE, WELLS, MCGEE, MILLER,
3 REHBEIN, SOFT, BRAINARD, GREEN, SIMPKINS, STOVALL, TASH, MASOLO, MOHL, FOSTER, COLE,
4 HAYNE, BENEDICT, PECK, HERRON, FORBES, MARSHALL, KNOX, DEVANEY, DEVLIN, GROSFIELD,
5 BROWN, MCCANN, ZOOK, HARDING, VICK, ORR, L. SMITH, BERGMAN, TVEIT, ANDERSON,
6 KEATING, KASTEN, MOLNAR, AHNER, HERTEL, MERCER, CURTISS, EMERSON
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8 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION
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10 PROVIDING PENALTIES; AMENDING SECTION 41-1-405, MCA; AND REPEALING SECTION 50-20-107,
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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16 Notice of Abortion Act".
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18 NEW SECTION. Section 2. Legislative purpose and findings. (1) The legislature finds that:

19 (a) immature minors often lack the ability to make fully informed choices that take into account
20 both immediate and long-range consequences;

21 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious and
22 can be lasting, particularly when the patient is immature;

23 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom
24 of an abortion are not necessarily related;

25 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's
26 best medical judgment concerning the minor;

27 (e) parents who are aware that their minor daughter has had an abortion may better ensure that
28 the daughter receives adequate medical care after the abortion; and

29 (f) parental consultation is usually desirable and in the best interests of the minor.

30 (2) The purpose of [sections 1 through 10] is to further the important and compelling state interests

1 of:

- 2 (a) protecting minors against their own immaturity;
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 4 (c) protecting the constitutional rights of parents to rear children who are members of their
 5 household; and
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 9 requires otherwise, the following definitions apply:

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 12 force, or deprivation of food and shelter.
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 14 has been granted an order of limited emancipation by a court as provided in 41-3-406.
 15 (4) "Incompetent person" means a person who is an incapacitated person or a protected person
 16 who has had a guardian appointed pursuant to Title 72, chapter 5.
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 18 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate
 19 abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in
 20 treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

21 **(6) "MINOR" MEANS A MALE OR FEMALE UNDER 18 YEARS OF AGE WHO IS NOT AN**
 22 **EMANCIPATED MINOR.**

23 ~~(6)(7)~~ "Physical abuse" means any physical injury intentionally inflicted by a parent or legal
 24 guardian on a child.

25 ~~(7)(8)~~ "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

26 ~~(8)(9)~~ "Sexual abuse" has the meaning given in 41-3-102.

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28 **NEW SECTION. Section 4. Notice of parent required.** A physician may not perform an abortion
 29 upon a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to
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 2 performs the abortion must receive the written statement of the referring physician certifying that the
 3 referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the
 4 physician or the physician's agent shall give alternate notice as provided in [section 5].

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 6 **NEW SECTION. Section 5. Alternate notification.** In lieu of the actual notice required by [section
 7 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the
 8 parent with return receipt requested and delivery restricted to the addressee, which means a postal
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 22 benefits may not be used to obtain an abortion.

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 24 **NEW SECTION. Section 8. Reports.** A monthly report indicating the number of notices issued
 25 under [sections 1 through 10] and the number of times in which exceptions were made to the notice
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 29 available to the public on an annual basis a compilation of the data reported.

1 **NEW SECTION. Section 9. Procedure for judicial waiver of notice.** (1) The requirements and
2 procedures under this section are available to minors and incompetent persons whether or not they are
3 residents of this state.

4 (2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice
5 requirement and may participate in the proceedings on the person's own behalf. The petition must include
6 a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad
7 litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings.
8 The youth court shall advise the petitioner of the right to court-appointed counsel and shall provide the
9 petitioner with counsel upon request.

10 (b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the
11 youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part
12 2, apply to an investigation conducted pursuant to this subsection.

13 (3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner.
14 All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym
15 or using the petitioner's initials. All documents related to the petition are confidential and are not available
16 to the public. The proceedings on the petition must be given preference over other pending matters to the
17 extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings
18 of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time
19 is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not
20 extended, the petition is granted and the notice requirement is waived.

21 (4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to
22 decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the
23 performance or inducement of an abortion without the notification of a parent or guardian.

24 (5) The court shall issue an order authorizing the petitioner to consent to an abortion without the
25 notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

26 (a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one
27 or both parents, a guardian, or a custodian; or

28 (b) the notification of a parent or guardian is not in the best interests of the petitioner.

29 (6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss
30 the petition.

1 (7) A court that conducts proceedings under this section shall issue written and specific findings
 2 of fact and conclusions of law supporting its decision and shall order that a confidential record of the
 3 evidence, findings, and conclusions be maintained.

4 (8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner
 5 if the youth court denies a petition. An order authorizing an abortion without notice is not subject to
 6 appeal.

7 (9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of
 8 parental notification or appeals a denial of a petition.

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 10 **NEW SECTION. Section 10. Criminal and civil penalties.** (1) A person convicted of performing
 11 an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed \$500 or be imprisoned
 12 in the county jail for a term not to exceed 6 months, or both.

13 (2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an
 14 appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues
 15 other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure
 16 to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice
 17 is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 10] do not
 18 limit the common-law rights of parents.

19 (3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon
 20 conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not
 21 to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not
 22 less than \$500 and not more than \$50,000 and be imprisoned in the state prison for a term not less than
 23 10 days and not more than 5 years, or both.

24 (4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as
 25 provided in [section 6(2)] is guilty of a misdemeanor.

26
 27 **Section 11.** Section 41-1-405, MCA, is amended to read:

28 **"41-1-405. Emergencies and special situations.** (1) ~~Any~~ A health professional may render or
 29 attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without
 30 compensation, to any injured person or any person regardless of age who is in need of immediate health

1 care when, in good faith, the professional believes that the giving of aid is the only alternative to probable
2 death or serious physical or mental damage.

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

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

10 (4) Self-consent of minors ~~shall~~ does not apply to sterilization or abortion, except as provided in
11 [sections 1 through 10]."

12

13 ~~NEW SECTION. Section 12. Right of intervention. Pursuant to Rule 24(a), Montana Rules of Civil~~
14 ~~Procedure, a legislator has the right to intervene in any case in which the constitutionality of Title 50,~~
15 ~~chapter 20, is challenged.~~

16

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

18

19 NEW SECTION. Section 13. Codification instruction. [Sections 1 through 10] are intended to be
20 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to
21 [sections 1 through 10].

22

23 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.

27

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 482 (third reading copy -- blue), respectfully report that HB 482 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 12.
Following: "force,"
Insert: "verbal abuse,"
2. Page 2, line 29.
Following: "physician"
Insert: "or the physician's agent"
3. Page 3, line 1.
Following: first "physician"
Insert: "or the referring physician's agent"
4. Page 3, line 3.
Following: "physician"
Insert: "or the referring physician's agent"

-END-

HB 482


87

Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 27, 1995 10:29 am

Mr. Chairman: I move to amend HB 482 (third reading copy -- blue).

ADOPT

REJECT

Signed: _____

Holden

Senator Holden

That such amendments read:

1. AMEND SENATE COMMITTEE ON JUDICIARY COMMITTEE REPORT DATED MARCH 22, 1995, AS FOLLOWS:

Strip amendments 1 through 4 in their entirety.

-END-

AV
Amd. Coord.

HB 482

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 28, 1995 1:40 pm

Mr. Chairman: I move to amend HB 482 (third reading copy -- blue).

ADOPT

27-22

REJECT

Signed


Senator Keating

That such amendments read:

1. Page 6, line 16.

Following: line 15

Insert: "NEW SECTION. Section 12. Right of intervention. Pursuant to Rule 24(a), Montana Rules of Civil Procedure, a legislator has the right to intervene in any case in which the legality of Title 50, chapter 20, is challenged."

Renumber: subsequent sections

-END-



Amd. Coord.

HB 482

SENATE

1 HOUSE BILL NO. 482

2 INTRODUCED BY GRIMES, MARTINEZ, ESTRADA, BAER, HARGROVE, WELLS, MCGEE, MILLER,
3 REHBEIN, SOFT, BRAINARD, GREEN, SIMPKINS, STOVALL, TASH, MASOLO, MOHL, FOSTER, COLE,
4 HAYNE, BENEDICT, PECK, HERRON, FORBES, MARSHALL, KNOX, DEVANEY, DEVLIN, GROSFIELD,
5 BROWN, MCCANN, ZOOK, HARDING, VICK, ORR, L. SMITH, BERGMAN, TVEIT, ANDERSON,
6 KEATING, KASTEN, MOLNAR, AHNER, HERTEL, MERCER, CURTISS, EMERSON

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION
9 FOR A MINOR OR INCOMPETENT PERSON; PROVIDING A JUDICIAL WAIVER OF NOTIFICATION;
10 PROVIDING PENALTIES; AMENDING SECTION 41-1-405, MCA; AND REPEALING SECTION 50-20-107,
11 MCA."

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

14
15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Parental
16 Notice of Abortion Act".

17
18 NEW SECTION. **Section 2. Legislative purpose and findings.** (1) The legislature finds that:

19 (a) immature minors often lack the ability to make fully informed choices that take into account
20 both immediate and long-range consequences;

21 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious and
22 can be lasting, particularly when the patient is immature;

23 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom
24 of an abortion are not necessarily related;

25 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's
26 best medical judgment concerning the minor;

27 (e) parents who are aware that their minor daughter has had an abortion may better ensure that
28 the daughter receives adequate medical care after the abortion; and

29 (f) parental consultation is usually desirable and in the best interests of the minor.

30 (2) The purpose of [sections 1 through 10] is to further the important and compelling state interests

1 of:

- 2 (a) protecting minors against their own immaturity;
- 3 (b) fostering family unity and preserving the family as a viable social unit;
- 4 (c) protecting the constitutional rights of parents to rear children who are members of their
- 5 household; and
- 6 (d) reducing teenage pregnancy and unnecessary abortion.

7

8 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], unless the context

9 requires otherwise, the following definitions apply:

- 10 (1) "Actual notice" means the giving of notice directly in person or by telephone.
- 11 (2) "Coercion" means restraining or dominating the choice of a minor female by force, threat of
- 12 force, or deprivation of food and shelter.
- 13 (3) "Emancipated minor" means a person under 18 years of age who is or has been married or who
- 14 has been granted an order of limited emancipation by a court as provided in 41-3-406.
- 15 (4) "Incompetent person" means a person who is an incapacitated person or a protected person
- 16 who has had a guardian appointed pursuant to Title 72, chapter 5.
- 17 (5) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical
- 18 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate
- 19 abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in
- 20 treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

21 **(6) "MINOR" MEANS A MALE OR FEMALE UNDER 18 YEARS OF AGE WHO IS NOT AN**

22 **EMANCIPATED MINOR.**

23 ~~(6)(7)~~ "Physical abuse" means any physical injury intentionally inflicted by a parent or legal

24 guardian on a child.

25 ~~(7)(8)~~ "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

26 ~~(8)(9)~~ "Sexual abuse" has the meaning given in 41-3-102.

27

28 **NEW SECTION. Section 4. Notice of parent required.** A physician may not perform an abortion

29 upon a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to

30 one parent or to the legal guardian of the pregnant minor or incompetent person of the physician's intention

1 to perform the abortion. The actual notice may be given by a referring physician. The physician who
2 performs the abortion must receive the written statement of the referring physician certifying that the
3 referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the
4 physician or the physician's agent shall give alternate notice as provided in [section 5].

5
6 **NEW SECTION. Section 5. Alternate notification.** In lieu of the actual notice required by [section
7 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the
8 parent with return receipt requested and delivery restricted to the addressee, which means a postal
9 employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur
10 at noon on the next day on which regular mail delivery takes place after mailing.

11
12 **NEW SECTION. Section 6. Exceptions.** Notice is not required under [section 4 or 5] if:

- 13 (1) the attending physician certifies in the patient's medical record that a medical emergency exists
14 and there is insufficient time to provide notice;
- 15 (2) notice is waived, in writing, by the person entitled to notice; or
- 16 (3) notice is waived under [section 9].

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