

JAN 24 2007

A BILL FOR AN ACT

RELATING TO PARENTAL NOTIFICATION BEFORE AN ABORTION MAY BE
PERFORMED ON CERTAIN MINORS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by adding a
2 new chapter to be appropriately designated and to read as
3 follows:

4 "CHAPTER

5 PARENTAL NOTICE OF ABORTION

6 § -1 Definitions. In this chapter:

7 "Abortion" means the use of any means to terminate the
8 pregnancy of a female known by the attending physician to be
9 pregnant, with the intention that the termination of the
10 pregnancy by those means will cause with reasonable likelihood
11 the death of the fetus. This definition applies only to an
12 unemancipated minor known by the attending physician to be
13 pregnant and may not be construed to limit a minor's access to
14 contraceptives.

15 "Director" means the director of health.

16 "Fetus" means an individual human organism from
17 fertilization until birth.



1 "Guardian" means a court-appointed guardian of the person
2 of the minor.

3 "Physician" means an individual licensed to practice
4 medicine in this State.

5 "Unemancipated minor" includes a minor who is unmarried.

6 § -2 Parental notice. (a) A physician may not perform
7 an abortion on a pregnant unemancipated minor unless:

8 (1) The physician performing the abortion gives at least
9 seventy-two hours actual notice, in person or by
10 telephone, of the physician's intent to perform the
11 abortion to:

12 (A) A parent of the minor, if the minor has no
13 guardian; or

14 (B) A court-appointed guardian;

15 (2) The judge of a family district court or the
16 intermediate appellate court issues an order
17 authorizing the minor to consent to the abortion as
18 provided by section -3 or -4;

19 (3) A family court or the intermediate appellate court, by
20 its inaction, constructively authorizes the minor to
21 consent to the abortion as provided by section -3
22 or -4; or



1 (4) The physician performing the abortion:

2 (A) Concludes that, on the basis of the physician's
3 good faith clinical judgment, a condition exists
4 that complicates the medical condition of the
5 pregnant minor and necessitates the immediate
6 abortion of her pregnancy to avert her death or
7 to avoid a serious risk of substantial and
8 irreversible impairment of a major bodily
9 function; and

10 (B) Certifies in writing to the director and in the
11 patient's medical record the medical indications
12 supporting the physician's judgment that the
13 circumstances described by paragraph (A) exist.

14 (b) If a person to whom notice may be given under
15 subsection (a)(1) cannot be notified after a reasonable effort,
16 a physician may perform an abortion if the physician gives
17 seventy-two hours constructive notice, by certified mail,
18 restricted delivery, sent to the last known address, to the
19 person to whom notice may be given under subsection (a)(1). The
20 period under this subsection begins when the notice is mailed.
21 If the person required to be notified is not notified within the



1 seventy-two-hour period, the abortion may proceed even if the
2 notice by mail is not received.

3 (c) The requirement that seventy-two hours actual notice
4 be provided under this section may be waived by an affidavit of:

5 (1) A parent of the minor, if the minor has no guardian;

6 or

7 (2) A court-appointed guardian.

8 (d) A physician may execute, for inclusion in the minor's
9 medical record, an affidavit stating that, according to the best
10 information and belief of the physician, notice or constructive
11 notice has been provided as required by this section. Execution
12 of an affidavit under this subsection creates a presumption that
13 the requirements of this section have been satisfied.

14 (e) The director shall prepare a form to be used for
15 making the certification required by subsection (a)(4).

16 (f) A certification required by subsection (a)(4) is
17 confidential and privileged and is not subject to disclosure
18 under chapter 92F or to discovery, subpoena, or other legal
19 process. Personal or identifying information about the minor,
20 including her name, address, or social security number, may not
21 be included in a certification under subsection (a)(4). The
22 physician shall keep the medical records on the minor in



1 compliance with the rules adopted by the board of medical
2 examiners.

3 (g) A physician who intentionally performs an abortion on
4 a pregnant unemancipated minor in violation of this section
5 commits an offense punishable by a fine not to exceed \$10,000.
6 "Intentionally" has the same meaning as in section 702-206.

7 (h) It is a defense to prosecution under this section that
8 the minor falsely represented her age, or her identity to the
9 physician by displaying an apparently valid governmental record
10 of identification such that a reasonable person under similar
11 circumstances would have relied on the representation. The
12 defense does not apply if the physician is shown to have had
13 independent knowledge of the minor's actual age or identity or
14 failed to use due diligence in determining the minor's age or
15 identity. In this subsection, "defense" has the same meaning as
16 in section 701-115.

17 (i) In relation to the trial of an offense under this
18 section in which the conduct charged involves a conclusion made
19 by the physician under subsection (a)(4), the defendant may seek
20 a hearing before the board of medical examiners on whether the
21 physician's conduct was necessary to avert the death of the
22 minor or to avoid a serious risk of substantial and irreversible



1 impairment of a major bodily function. The findings of the
2 board of medical examiners under this subsection are admissible
3 on that issue in the trial of the defendant. Notwithstanding
4 any other reason for a continuance provided by law, on motion of
5 the defendant, the court shall delay the beginning of the trial
6 for not more than thirty days to permit a hearing under this
7 subsection to take place.

8 § -3 Judicial approval. (a) A pregnant minor who
9 wishes to have an abortion without notification to one of her
10 parents or her guardian may file an application for a court
11 order authorizing the minor to consent to the performance of an
12 abortion without notification to either of her parents or a
13 guardian.

14 (b) The application may be filed in any family court at
15 law in this State.

16 (c) The application must be made under oath and include:

17 (1) A statement that the minor is pregnant;

18 (2) A statement that the minor is unmarried and is under
19 eighteen years of age;

20 (3) A statement that the minor wishes to have an abortion
21 without the notification of either of her parents or a
22 guardian; and



1 (4) A statement as to whether the minor has retained an
2 attorney and, if she has retained an attorney, the
3 name, address, and telephone number of her attorney.

4 (d) The clerk of the court shall deliver a courtesy copy
5 of the application made under this section to the judge who is
6 to hear the application.

7 (e) The court shall appoint a guardian ad litem for the
8 minor. If the minor has not retained an attorney, the court
9 shall appoint an attorney to represent the minor. If the
10 guardian ad litem is an attorney admitted to the practice of law
11 in this State, the court may appoint the guardian ad litem to
12 serve as the minor's attorney.

13 (f) The court may appoint to serve as guardian ad litem:

14 (1) A person who may consent to treatment for the minor as
15 provided by law;

16 (2) A psychiatrist or an individual licensed or certified
17 as a psychologist in this State;

18 (3) An appropriate employee of the department of human
19 services;

20 (4) A member of the clergy; or

21 (5) Another appropriate person selected by the court.



1 (g) The court shall fix a time for a hearing on an
2 application filed under subsection (a) and shall keep a record
3 of all testimony and other oral proceedings in the action. The
4 court shall enter judgment on the application immediately after
5 the hearing is concluded.

6 (h) The court shall rule on an application submitted under
7 this section and shall issue written findings of fact and
8 conclusions of law not later than 5:00 p.m. on the second
9 business day after the date the application is filed with the
10 court. On request by the minor, the court shall grant an
11 extension of the period specified by this subsection. If a
12 request for an extension is made, the court shall rule on an
13 application and shall issue written findings of fact and
14 conclusions of law not later than 5:00 p.m. on the second
15 business day after the date the minor states she is ready to
16 proceed to hearing. If the court fails to rule on the
17 application and issue written findings of fact and conclusions
18 of law within the period specified by this subsection, the
19 application is deemed to be granted and the physician may
20 perform the abortion as if the court had issued an order
21 authorizing the minor to consent to the performance of the
22 abortion without notification under section -2. Proceedings



1 under this section shall be given precedence over other pending
2 matters to the extent necessary to ensure that the court reaches
3 a decision promptly.

4 (i) The court shall determine by a preponderance of the
5 evidence whether notification would not be in the best interest
6 of the minor or whether notification may lead to physical or
7 sexual abuse of the minor. If the court finds that notification
8 would not be in the minor's best interest, or that notification
9 may lead to physical or sexual abuse of the minor, the court
10 shall enter an order authorizing the minor to consent to the
11 performance of the abortion without notification to either of
12 her parents or a guardian and shall execute the required forms.

13 (j) If the court finds that the minor does not meet the
14 requirements of subsection (i), the court may not authorize the
15 minor to consent to an abortion without the notification
16 authorized under section -2(a)(1).

17 (k) The court may not notify a parent or guardian that the
18 minor is pregnant or that the minor wants to have an abortion.
19 The court proceedings shall be conducted in a manner that
20 protects the anonymity of the minor. The application and all
21 other court documents pertaining to the proceedings are
22 confidential and privileged and are not subject to disclosure



1 under chapter 92F, or to discovery, subpoena, or other legal
2 process. The minor may file the application using a pseudonym
3 or using only her initials.

4 (l) An order of the court issued under this section is
5 confidential and privileged and is not subject to disclosure
6 under chapter 92F, or discovery, subpoena, or other legal
7 process. The order may not be released to any person but the
8 pregnant minor, the pregnant minor's guardian ad litem, the
9 pregnant minor's attorney, another person designated to receive
10 the order by the minor, or a governmental agency or attorney in
11 a criminal or administrative action seeking to assert or protect
12 the interest of the minor. The supreme court may adopt rules to
13 permit confidential docketing of an application under this
14 section.

15 (m) The clerk of the family court shall prescribe the
16 application form to be used by the minor filing an application
17 under this section.

18 (n) A filing fee is not required of and court costs may
19 not be assessed against a minor filing an application under this
20 section.

21 § -4 Appeal. (a) A minor whose application under
22 section -3 is denied may appeal to the intermediate appellate



1 court. On receipt of a notice of appeal, the clerk of the court
2 that denied the application shall deliver a copy of the notice
3 of appeal and record on appeal to the clerk of the intermediate
4 appellate court. On receipt of the notice and record, the clerk
5 of the intermediate appellate court shall place the appeal on
6 the docket of the court.

7 (b) The intermediate appellate court shall rule on an
8 appeal under this section not later than 5:00 p.m. on the second
9 business day after the date the notice of appeal is filed with
10 the court that denied the application. On request by the minor,
11 the court shall grant an extension of the period specified by
12 this subsection. If a request for an extension is made, the
13 court shall rule on the appeal not later than 5:00 p.m. on the
14 second business day after the date the minor states she is ready
15 to proceed. If the intermediate appellate court fails to rule
16 on the appeal within the period specified by this subsection,
17 the appeal is deemed to be granted and the physician may perform
18 the abortion as if the court had issued an order authorizing the
19 minor to consent to the performance of the abortion without
20 notification under section -2. Proceedings under this
21 section shall be given precedence over other pending matters to



1 the extent necessary to ensure that the court reaches a decision
2 promptly.

3 (c) A ruling of the intermediate appellate court under
4 this section is confidential and privileged and is not subject
5 to disclosure under chapter 92F, or discovery, subpoena, or
6 other legal process. The ruling may not be released to any
7 person but the pregnant minor, the pregnant minor's guardian ad
8 litem, the pregnant minor's attorney, another person designated
9 to receive the ruling by the minor, or a governmental agency or
10 attorney in a criminal or administrative action seeking to
11 assert or protect the interest of the minor. The supreme court
12 may adopt rules to permit confidential docketing of an appeal
13 under this section.

14 (d) The clerk of the intermediate appellate court shall
15 prescribe the notice of appeal form to be used by the minor
16 appealing a judgment under this section.

17 (e) A filing fee is not required of and court costs may
18 not be assessed against a minor filing an appeal under this
19 section.

20 § -5 Affidavit of physician. (a) A physician may
21 execute for inclusion in the minor's medical record an affidavit



1 stating that, after reasonable inquiry, it is the belief of the
2 physician that:

3 (1) The minor has made an application or filed a notice of
4 an appeal with a court under this chapter;

5 (2) The deadline for court action imposed by this chapter
6 has passed; and

7 (3) The physician has been notified that the court has not
8 denied the application or appeal.

9 (b) A physician who in good faith has executed an
10 affidavit under subsection (a) may rely on the affidavit and may
11 perform the abortion as if the court had issued an order
12 granting the application or appeal.

13 § -6 Guardian ad litem immunity. A guardian ad litem
14 appointed under this chapter and acting in the course and scope
15 of the appointment is not liable for damages arising from an act
16 or omission of the guardian ad litem committed in good faith.

17 § -7 Costs paid by State. (a) A court acting under
18 section -3 or -4 may issue an order requiring the State to
19 pay:

20 (1) The cost of any attorney ad litem and any guardian ad
21 litem appointed for the minor;



1 (2) Notwithstanding sections -3(n) and -4(e), the
2 costs of court associated with the application or
3 appeal; and

4 (3) Any court reporter's fees incurred.

5 (b) An order issued under subsection (a) must be directed
6 to the director of finance, who shall pay the amount ordered
7 from funds appropriated to the department of health.

8 **§ -8 Physician's duty to report abuse of a minor;**

9 **investigation and assistance.** (a) A physician who, as a result
10 of services provided under this chapter, has reason to believe
11 that a minor has been or may be physically or sexually abused by
12 a person responsible for the minor's care, custody, or welfare,
13 shall immediately report the suspected abuse to the department
14 of human services and shall refer the minor to the department
15 for services or intervention that may be in the best interest of
16 the minor.

17 (b) The department of human services shall investigate
18 suspected abuse reported under this section and, if appropriate,
19 shall assist the minor in making an application with a court
20 under section -3.

21 **§ -9 Other reports of sexual abuse of a minor.**

22 Notwithstanding any other law or professional standards of



1 conduct to the contrary, a court or the guardian ad litem or
2 attorney for the minor shall report conduct reasonably believed
3 to constitute an offense under part V of chapter 707, based on
4 information obtained during a confidential court proceeding held
5 under this chapter to:

- 6 (1) Any county or state law enforcement agency;
- 7 (2) The department of human services, if the alleged
8 conduct involves a person responsible for the care,
9 custody, or welfare of the child;
- 10 (3) The state agency that operates, licenses, certifies,
11 or registers the facility in which the alleged conduct
12 occurred, if the alleged conduct occurred in a
13 facility operated, licensed, certified, or registered
14 by a state agency; or
- 15 (4) An appropriate agency designated by the court.

16 § -10 Confidentiality. Notwithstanding any other law,
17 information obtained by the department of human services or
18 another entity under section -8 or -9 is confidential
19 except to the extent necessary to prove an offense under part V
20 of chapter 707.

21 § -11 Information relating to judicial bypass. The
22 department of health shall produce and distribute informational



1 materials that explain the rights of a minor under this chapter.
 2 The materials shall explain the procedures established by
 3 sections -3 and -4 and provide information relating to
 4 alternatives to abortion and health risks associated with
 5 abortion."

6 SECTION 2. If any provision of this Act, or the
 7 application thereof to any person or circumstance is held
 8 invalid, the invalidity does not affect other provisions or
 9 applications of the Act, which can be given effect without the
 10 invalid provision or application, and to this end the provisions
 11 of this Act are severable.

12 SECTION 3. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Report Title:

Abortion; Parental Notice

Description:

Prohibits physician from performing an abortion on a minor unless: (1) the physician has given 72 hours actual notice to the minor's parents or guardian; (2) a family court or appellate court authorizes the minor to consent, either by issuing an appropriate order or by failing to do so; or (3) the physician concludes that an abortion is necessary to avoid death or a serious risk of substantial and irreversible impairment of a major bodily function. Prescribes procedure for obtaining judicial approval.

