

SENATE, No. 2131

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Senators SCOTT, CARDINALE, Cafiero, Inverso,
O'Connor, Sacco and Kenny

1 AN ACT concerning parental notification for abortion, amending and
2 supplementing P.L.1965, c.217.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 1 of P.L.1965, c.217 (C.9:17A-1) is amended to read as
8 follows:

9 1. The consent to the performance of medical or surgical care and
10 procedure by a hospital or by a physician licensed to practice medicine
11 and surgery executed by a married person who is a minor, or by a
12 pregnant woman who is a minor, on his or her behalf or on behalf of
13 any of his or her children, shall be valid and binding, and, for such
14 purposes, a married person who is a minor or a pregnant woman who
15 is a minor shall be deemed to have the same legal capacity to act and
16 shall have the same powers and obligations as has a person of legal
17 age. Notwithstanding any other provision of the law, an unmarried,
18 pregnant minor may give consent to the furnishing of hospital, medical
19 and surgical care related to her pregnancy or her child, except for the
20 purposes and requirements of P.L. _____, c. _____ (C. _____) (now pending
21 before the Legislature as this bill) and such consent shall not be subject
22 to disaffirmance because of minority. The consent of the parent or
23 parents of an unmarried, pregnant minor shall not be necessary in
24 order to authorize hospital, medical and surgical care related to her
25 pregnancy or her child, except for the purposes and requirements of
26 P.L. _____, c. _____ (C. _____) (now pending before the Legislature as this
27 bill).

28 (cf: P.L.1965, c.217, s.1)

29

30 2. (New section) Sections 2 through 10 of this act shall be known
31 and may be cited as the "Parental Notification for Abortion Act."

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. (New section) The Legislature finds that there exist compelling
2 and important State interests in protecting minors against their own
3 immaturity, in fostering the family structure and preserving it as a
4 viable social unit, and in protecting the rights of parents to rear their
5 children.

6 The Legislature further finds that minors often lack the ability to
7 make fully informed choices that take into account both immediate and
8 long-range consequences of their actions; that the medical, emotional,
9 and psychological consequences of abortion are serious and of
10 indeterminate duration, particularly when the patient is a minor; that
11 parents ordinarily possess information essential to a physician's
12 exercise of his best medical judgment concerning their child; and that
13 parents who are aware that their minor daughter has had an abortion
14 may better insure that the minor receives adequate medical attention
15 after her abortion. The Legislature further finds that parental
16 consultation regarding abortion is desirable and in the best interest of
17 the minor.

18 It is, therefore, the intent of the Legislature to further the interests
19 stated above by enacting this parental notice provision.
20

21 4. (New section) As used in this act:

22 "Abortion" means the use of any means to terminate the pregnancy
23 of a female known to be pregnant with knowledge that the termination
24 with those means will, with reasonable likelihood, cause the death of
25 the fetus.

26 "Fetus" means the offspring of human beings existing from the
27 moment of fertilization of the ovum by the spermatozoa through every
28 stage of development until birth.

29 "Parent" means: a. Both parents of an unemancipated minor, if
30 both parents are domiciled at the same address; or b. The parent with
31 primary custody, care and control of the unemancipated minor; or c.
32 If there is no parent with primary custody, care and control, then the
33 foster parents, foster parent or the guardian of the unemancipated
34 minor.

35 "Unemancipated minor" means a female under the age of 18 years
36 who is unmarried and is not currently serving active duty in one of the
37 military services of the United States of America or a female for whom
38 a guardian has been appointed pursuant to N.J.S.3B:12-25 because of
39 a finding of incompetency. For the purposes of this act, pregnancy
40 does not emancipate a female under the age of 18 years.
41

42 5. (New section) a. Notwithstanding any other provision of law to
43 the contrary, an abortion shall not be performed upon an
44 unemancipated minor until at least 48 hours after written notice of the
45 pending operation has been delivered in the manner specified in this
46 act.

1 b. The notice shall be addressed to the parent at the parent's last
2 known address and delivered personally to the parent by the physician.

3 c. In lieu of the personal delivery required in subsection b. of this
4 section, notice may be made by certified mail addressed to the parent
5 at the parent's last known address with return receipt requested and
6 restricted delivery to the addressee, which means a postal employee
7 may only deliver the mail to the authorized addressee. At the same
8 time that notice is mailed by certified mail, it shall also be sent by first
9 class mail to the parent at the parent's last known address. The 48
10 hour period for notice sent under the provisions of this subsection shall
11 begin at noon on the next day on which regular mail delivery takes
12 place following the day on which the mailings are posted.

13
14 6. (New section) Notice of a pending abortion shall not be required
15 under this act if the parent who is entitled to notice has set forth in a
16 notarized writing that notice was received.

17
18 7. (New section) Notice of a pending abortion shall not be required
19 under this act if the attending physician certifies in the unemancipated
20 minor's medical records that the abortion is necessary to prevent the
21 unemancipated minor's death and there is insufficient time to provide
22 the required notice.

23
24 8. (New section) a. If the pregnant unemancipated minor objects
25 to notice being given to her parent because of allegations that she is
26 the victim by her parent of abuse, cruelty or neglect, as defined in
27 R.S.9:6-1, she may, by petition or motion, seek a waiver of parental
28 notification from a judge of the Superior Court. Such judicial
29 determination of parental abuse shall not be based, in whole or in part,
30 on either (1) the personal opposition of such parent to the pending
31 abortion or to abortion in general, or (2) the refusal by such parent to
32 pay for the pending abortion, or the unemancipated minor's assertion
33 that such parent would not pay for the pending abortion.

34 If the judge, after an appropriate hearing, determines the
35 allegations are unfounded, notice shall be given as provided for in
36 section 5 of this act. If the judge determines the allegations are true,
37 and that notification of the minor's parent would not be in her best
38 interest, then the judge shall authorize a waiver of notification. Notice
39 of that determination shall be made to the Division of Youth and
40 Family Services.

41 b. The minor may participate in proceedings in the court on her
42 own behalf, and the court may appoint a guardian ad litem for her.
43 The court shall, however, advise her that she has a right to court
44 appointed counsel, and shall, upon her request, provide her with such
45 counsel.

46 c. Proceedings in the court under this section shall be confidential

1 and shall be given such precedence over other pending matters so that
2 the court may reach a decision promptly and without delay so as to
3 serve the best interest of the minor. A judge of the Superior Court
4 who conducts proceedings under this section shall make specific
5 written factual findings and legal conclusions supporting the decision
6 and shall order a record of the evidence to be maintained including the
7 judge's findings and conclusions.

8 d. An expedited confidential appeal shall be available to a minor for
9 whom the court denies an order waiving notification. No filing fees
10 shall be required of any minor at either the trial or the appellate level.
11 Access to the trial court for the purposes of such a petition or motion,
12 and access to the appellate courts for purposes of making an appeal
13 from denial of the same, shall be afforded such a minor on an emergent
14 basis in accordance with the rules of court.

15
16 9. (New section) Nothing in this act shall be interpreted to deny a
17 pregnant unemancipated minor who is under the age of 18 any benefits
18 to which she would otherwise be entitled pursuant to law.

19
20 10. (New section) Any person who performs an abortion in
21 violation of this act shall be subject to a civil penalty of not less than
22 \$1,000 and not more than \$5,000 and shall be liable in a civil action by
23 a parent wrongfully denied notification. A person shall not be liable
24 under this act if the person establishes by written evidence that the
25 person relied upon evidence sufficient to convince a careful and
26 prudent person that the representations of the unemancipated minor
27 regarding information necessary to comply with this section are bona
28 fide and true, or if the person has attempted with reasonable diligence
29 to deliver notice, but has been unable to do so.

30
31 11. This act shall take effect immediately.

32 33 34 STATEMENT

35
36 This bill requires that before a doctor may perform or induce an
37 abortion on a pregnant unemancipated minor, written notice must be
38 given to the minor's parent or guardian. "Parent" is defined as both
39 parents of an unemancipated minor, if both parents are domiciled at
40 the same address; or the parent with primary custody, care and control
41 of the unemancipated minor; or, if there is no parent with primary
42 custody, care and control, then the foster parents, foster parent or the
43 guardian of the unemancipated minor.

44 The bill requires the notice to be delivered to the parent at the
45 parent's last known address either personally by the doctor or by
46 certified mail, return receipt requested and restricted delivery to the

1 addressee. The abortion procedure cannot be performed until at least
2 48 hours after the notice has been delivered or posted to the parent.

3 The bill provides that notice of a pending abortion will not be
4 required if the parent who is entitled to notice has set forth in a
5 notarized writing that notice was received or if there is an emergency
6 need for the abortion because of an immediate threat to the life of the
7 unemancipated minor.

8 If the unemancipated minor objects to notice because of allegations
9 that she is a victim of abuse, cruelty or neglect, she may petition the
10 court for a waiver of notification. If the judge determines the
11 allegations are true, and that parental notification would not be in the
12 minor's best interest, he shall order the waiver. Notice of the judge's
13 determination shall be made to the Division of Youth and Family
14 Services. The court proceedings shall be confidential and the decision
15 made promptly so as to serve the best interest of the minor.
16 Additionally, an expedited confidential appeal from an order denying
17 the waiver shall be available to the pregnant minor.

18 The bill also provides that performance of an abortion in violation
19 of the act will result in a civil penalty of between \$1,000 and \$5,000
20 and shall be grounds for a civil action by the parent denied
21 notification.

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26 _____
Requires parental notification of abortion performed on minor.