

1 SENATE BILL NO. 416

2 INTRODUCED BY D. GRIMES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REINSTATING THE PARENTAL NOTIFICATION LAWS FOR AN
5 ABORTION UPON A MINOR; PROVIDING THAT A MINOR FROM ANOTHER STATE SEEKING AN
6 ABORTION IN MONTANA MUST COMPLY WITH THE PARENTAL NOTIFICATION OR CONSENT LAWS
7 OF THE STATE OF RESIDENCE; REPEALING SECTIONS 50-20-204, 50-20-205, 50-20-208, 50-20-209,
8 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

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

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12 NEW SECTION. **Section 1. Notice of parent required.** A physician may not perform an abortion
13 upon a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to
14 one parent or to the legal guardian of the pregnant minor or incompetent person of the physician's
15 intention to perform the abortion. The actual notice may be given by a referring physician. The physician
16 who performs the abortion must receive the written statement of the referring physician certifying that
17 the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the
18 physician or the physician's agent shall give alternate notice as provided in [section 2].

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20 NEW SECTION. **Section 2. Alternate notice.** In lieu of the actual notice required by [section 1],
21 notice may be made by certified mail addressed to the parent at the usual place of residence of the parent
22 with return receipt requested and delivery restricted to the addressee, which means that a postal employee
23 may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on
24 the next day on which regular mail delivery takes place after mailing.

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26 NEW SECTION. **Section 3. Exceptions.** Notice is not required under [section 1 or 2] if:

- 27 (1) the attending physician certifies in the patient's medical record that a medical emergency
28 exists and there is insufficient time to provide notice;
- 29 (2) notice is waived, in writing, by the person entitled to notice; or
- 30 (3) notice is waived under [section 6].

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2 NEW SECTION. **Section 4. Coercion prohibited.** A parent, a guardian, or any other person may
3 not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents,
4 guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered
5 an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance
6 benefits may not be used to obtain an abortion.

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8 NEW SECTION. **Section 5. Reports.** A monthly report indicating the number of notices issued
9 under this part and the number of times in which exceptions were made to the notice requirement under
10 [section 3], as well as the type of exceptions, must be filed with the department on forms prescribed by
11 the department. Patient names and other identifying information may not be used on the forms. The
12 department shall prepare and make available to the public on an annual basis a compilation of the data
13 reported.

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15 NEW SECTION. **Section 6. Procedure for judicial waiver of notice.** (1) The requirements and
16 procedures under this section are available to minors and incompetent persons whether or not they are
17 residents of this state.

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

24 (b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the
25 youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part
26 2, apply to an investigation conducted pursuant to this subsection.

27 (3) Proceedings under this section are confidential and must ensure the anonymity of the
28 petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a
29 pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are
30 not available to the public. The proceedings on the petition must be given preference over other pending

1 matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue
2 written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed
3 unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and
4 the time is not extended, the petition is granted and the notice requirement is waived.

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

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

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

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

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

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

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

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

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24 NEW SECTION. **Section 7. Compliance with other state law.** If a minor who is a resident of
25 another state comes to Montana for the purpose of and with the intention of obtaining an abortion and the
26 state of the minor's residence has a law requiring parental consent or notification before an abortion may
27 be performed on a minor, then the minor may not obtain an abortion in Montana until the minor and the
28 physician have complied with the law of the state of the minor's residence.

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30 NEW SECTION. **Section 8. Criminal and civil penalties.** (1) A person convicted of performing an

1 abortion in violation of [section 1, 2, or 7] shall be fined an amount not to exceed \$500, be imprisoned
2 in the county jail for a term not to exceed 6 months, or both.

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

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

14 (4) A person not authorized to receive notice under [section 2] who signs a notice of waiver, as
15 provided in [section 3(2)], is guilty of a misdemeanor.

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17 **NEW SECTION.** **Section 9. Repealer.** Sections 50-20-204, 50-20-205, 50-20-208, 50-20-209,
18 50-20-211, 50-20-212, and 50-20-215, MCA, are repealed.

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20 **NEW SECTION.** **Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
21 codified as an integral part of Title 50, chapter 20, part 2, and the provisions of Title 50, chapter 20, part
22 2, apply to [sections 1 through 8].

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24 **NEW SECTION.** **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
26 applications, the part remains in effect in all valid applications that are severable from the invalid
27 applications.

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29 **NEW SECTION.** **Section 12. Contingent voidness.** If Senate Bill No. ___ [LC0073] is not passed
30 by the legislature and approved by the electorate, then [this act] is void.

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2 NEW SECTION. **Section 13. Contingent effective date.** [This act] is effective on the date that
3 Senate Bill No. ____ [LC0073] is effective.

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