

HOUSE BILL NO. 391

INTRODUCED BY G. BENNETT

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 11] may be cited as the "Parental Consent for Abortion Act of 2013".

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

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

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

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

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

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

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

(2) The purpose of [sections 1 through 11] is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;



- 1 (c) protecting the constitutional rights of parents to rear children who are members of their household;
- 2 and
- 3 (d) reducing teenage pregnancy and unnecessary abortion.

4

5 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 11], unless the context requires

6 otherwise, the following definitions apply:

7 (1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or deprivation

8 of food and shelter.

9 (2) "Consent" means a notarized written statement obtained on a form and executed in the manner

10 prescribed by [section 5] that is signed by a parent or legal guardian of a minor and that declares that the minor

11 intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.

12 (3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has

13 been granted an order of limited emancipation by a court as provided in 41-1-503.

14 (4) "Medical emergency" means a condition that, on the basis of the good faith clinical judgment of a

15 physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate

16 the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay

17 in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

18 (5) "Minor" means a pregnant female under 18 years of age who is not an emancipated minor.

19 (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a

20 minor.

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

22 (8) "Physician assistant" means a person licensed pursuant to Title 37, chapter 20, who provides medical

23 services under the supervision of a physician.

24 (9) "Sexual abuse" has the meaning provided in 41-3-102.

25

26 **NEW SECTION. Section 4. Consent of parent or legal guardian required.** (1) Except as provided

27 in [section 7], no physician or physician assistant may perform an abortion on a minor unless the physician or

28 physician assistant or the agent of the physician or physician assistant first obtains the notarized written consent

29 of a parent or legal guardian of the minor.

30 (2) The consent of a parent or legal guardian of the minor is invalid unless it is obtained in the manner

1 and on the form prescribed by [section 5].

2

3 **NEW SECTION. Section 5. Consent form -- disclosure -- requirements for validity.** (1) The
4 department of public health and human services shall create a consent form to be used by physicians, physician
5 assistants, or their agents in obtaining the consent of a parent or legal guardian as required under [section 4] or
6 in obtaining the waiver of the consent of a parent or legal guardian as provided for in [section 7].

7 (2) The form must disclose but is not limited to the following:

8 (a) any information that a physician or physician assistant is required by law to provide to the minor and
9 the rights of the minor;

10 (b) the rights of the parent or legal guardian;

11 (c) the surgical or medical procedures that may be performed on the minor;

12 (d) the risks and hazards related to the procedures planned for the minor, including but not limited to the
13 risks and hazards associated with:

14 (i) any surgical, medical, or diagnostic procedure, including the potential for infection, blood clots in veins
15 and lungs, hemorrhage, and allergic reactions;

16 (ii) a surgical abortion, including hemorrhage, uterine perforation or other damage to the uterus, sterility,
17 injury to the bowel or bladder, a potential hysterectomy caused by a complication or injury during the procedure,
18 and the possibility of additional procedures being required because of failure to remove all products of conception;

19 (iii) a medical or nonsurgical abortion, including hemorrhage, sterility, the continuation of the pregnancy,
20 and the possibility of additional procedures being required because of failure to remove all products of conception;
21 and

22 (iv) the particular procedure that is planned for the minor, including cramping of the uterus, pelvic pain,
23 infection of the female reproductive organs, cervical laceration, incompetent cervix, and the requirement of
24 emergency treatment for any complications.

25 (3) The form must include:

26 (a) a minor consent statement that the minor must sign. The minor consent statement must include but
27 is not limited to the following points, each of which must be initialed by the minor:

28 (i) the minor understands that the physician or physician assistant is going to perform an abortion on the
29 minor and that the abortion will end the minor's pregnancy;

30 (ii) the minor is not being coerced into having an abortion, the minor has the choice not to have the

1 abortion, and the minor may withdraw consent at any time prior to the abortion;

2 (iii) the minor consents to the procedure;

3 (iv) the minor understands the risks and hazards associated with the surgical or medical procedures
4 planned for the minor;

5 (v) the minor has been provided the opportunity to ask questions about the pregnancy, alternative forms
6 of treatment, the risk of nontreatment, the procedures to be used, and the risks and hazards involved; and

7 (vi) the minor has sufficient information to give informed consent.

8 (b) a parental consent statement that a parent or legal guardian must sign. The parental consent
9 statement must include but is not limited to the following points, each of which must be initialed by a parent or
10 legal guardian:

11 (i) the parent or legal guardian understands that the physician or physician assistant who signed the
12 physician declaration statement provided for in subsection (3)(c) is going to perform an abortion on the minor that
13 will end the minor's pregnancy;

14 (ii) the parent or legal guardian had the opportunity to read the consent form or had the opportunity to
15 have the consent form read to the parent or legal guardian;

16 (iii) the parent or legal guardian had the opportunity to ask questions of the physician or physician
17 assistant or the agent of the physician or physician assistant regarding the information contained in the consent
18 form and the surgical and medical procedures to be performed on the minor;

19 (iv) the parent or legal guardian has been provided sufficient information to give informed consent.

20 (c) a physician declaration that the physician or physician assistant must sign, declaring that:

21 (i) the physician or physician assistant or the agent of the physician or physician assistant explained the
22 procedure and contents of the consent form to the minor and a parent or legal guardian of the minor and
23 answered any questions; and

24 (ii) to the best of the physician's or physician assistant's knowledge, the minor and a parent or legal
25 guardian of the minor have been adequately informed and have consented to the abortion; and

26 (d) a signature page for a parent or legal guardian of the minor that must be notarized and that includes
27 an acknowledgment by the parent or legal guardian affirming that the parent or legal guardian is the minor's
28 parent or legal guardian.

29

30 **NEW SECTION. Section 6. Proof of identification and relationship to minor -- retention of records.**

1 (1) A parent or legal guardian of a minor who is consenting to the performance of an abortion on the minor must
2 provide the attending physician or physician assistant or the agent of the physician or physician assistant with
3 government-issued proof of identity and written documentation that establishes that the parent or legal guardian
4 is the lawful parent or legal guardian of the minor.

5 (2) A physician or physician assistant shall retain the completed consent form and the documents
6 provided pursuant to subsection (1) in the minor's medical file for 5 years after the minor reaches 18 years of age,
7 but in no event less than 7 years.

8 (3) A physician or physician assistant receiving documentation under this section shall execute for
9 inclusion in the minor's medical record an affidavit stating: "I, (insert name of physician or physician assistant),
10 certify that according to my best information and belief, a reasonable person under similar circumstances would
11 rely on the information presented by both the minor and the minor's parent or legal guardian as sufficient evidence
12 of identity and relationship."
13

14 **NEW SECTION. Section 7. Exceptions.** Consent is not required under [section 4] if:

15 (1) the attending physician or physician assistant certifies in the minor's medical record that a medical
16 emergency exists and there is insufficient time to provide consent;

17 (2) consent is waived, in a notarized writing, by the person entitled to give consent; or

18 (3) consent is waived under [section 9].
19

20 **NEW SECTION. Section 8. Coercion prohibited.** A parent, a legal guardian, or any other person may
21 not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, legal
22 guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an
23 emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits
24 may not be used to obtain an abortion.
25

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

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

1 to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned
2 counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon
3 request.

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

12 (4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall
13 issue an order authorizing the minor to consent to the performance or inducement of an abortion without the
14 consent of a parent or legal guardian.

15 (5) The court shall issue an order authorizing the minor to consent to an abortion without the consent
16 of a parent or legal guardian if the court finds that:

17 (a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both
18 parents, a legal guardian, or a custodian; or

19 (b) the consent of a parent or legal guardian is not in the best interests of the minor.

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

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

25 (8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth
26 court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not
27 subject to appeal.

28 (9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for
29 consent or who appeals a denial of a petition.

30

1 **NEW SECTION. Section 10. Criminal and civil penalties.** (1) A person convicted of performing an
2 abortion in violation of [section 4] shall be fined an amount not to exceed \$1,000 or be imprisoned in the county
3 jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an
4 amount not less than \$500 or more than \$50,000 and be imprisoned in the state prison for a term of not less than
5 10 days or more than 5 years, or both.

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

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

17 (4) A person not authorized to grant consent under [section 4] who signs a consent form provided for
18 in [section 5] is guilty of a misdemeanor.

19
20 **NEW SECTION. Section 11. Construction.** Nothing in [sections 1 through 11] may be construed as
21 creating or recognizing a right to abortion. It is not the intention of [sections 1 through 11] to make lawful an
22 abortion that is currently unlawful.

23
24 **Section 12.** Section 41-1-405, MCA, is amended to read:

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

30 (2) A health professional may render nonemergency services to minors for conditions that will endanger

1 the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents,
2 or legal guardian.

3 (3) Consent may not be required of a minor who does not possess the mental capacity or who has a
4 physical disability that renders the minor incapable of giving consent and who has no known relatives or legal
5 guardians, if a physician determines that the health service should be given.

6 (4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50,~~
7 ~~chapter 20, part 2~~ sections 1 through 11."

8

9 **Section 13.** Section 47-1-104, MCA, is amended to read:

10 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**
11 **expense.** (1) There is a statewide public defender system, which is required to deliver public defender services
12 in all courts in this state. The system is supervised by the commission and administered by the office.

13 (2) The commission shall approve a strategic plan for service delivery and divide the state into not more
14 than 11 public defender regions. The commission may establish a regional office to provide public defender
15 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
16 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
17 in 47-1-102.

18 (3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate
19 office shall immediately assign a public defender qualified to provide the required services. The commission shall
20 establish protocols to ensure that the offices make appropriate assignments in a timely manner.

21 (4) A court may order an office to assign counsel under this chapter in the following cases:

22 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial
23 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

24 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of
25 incarceration, as provided in 46-8-101;

26 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in
27 40-6-119;

28 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
29 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child
30 Welfare Act, as provided in 41-3-425;

- 1 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 2 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 3 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 4 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
- 5 disabled person to a residential facility, as provided in 53-20-112;
- 6 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in
- 7 53-21-116;
- 8 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
- 9 provided in 53-24-302; and
- 10 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 11 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless
- 12 of the person's financial ability to retain private counsel, as follows:
- 13 (i) as provided for in 41-3-425;
- 14 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in
- 15 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution
- 16 Act, as provided in 41-5-1607;
- 17 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,
- 18 as provided in 41-6-101;
- 19 (iv) for a minor who petitions for a waiver of parental ~~notification consent~~ requirements under the ~~Parental~~
- 20 ~~Notice of Abortion Act~~ Parental Consent for Abortion Act of 2013, as provided in ~~50-20-232~~ [section 9];
- 21 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
- 22 person to a residential facility, as provided in 53-20-112;
- 23 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 24 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a
- 25 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 26 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental
- 27 disorder of the ward, as provided in 72-5-322; and
- 28 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 29 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
- 30 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title

1 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

2 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender
3 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a
4 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the
5 statewide public defender system and does not result in a conflict of interest."

6
7 **NEW SECTION. Section 14. Repealer.** The following sections of the Montana Code Annotated are
8 repealed:

- 9 50-20-221. Short title.
10 50-20-222. Legislative purpose and findings.
11 50-20-223. Definitions.
12 50-20-224. Notice of parent required.
13 50-20-225. Alternative notification.
14 50-20-228. Exceptions.
15 50-20-229. Coercion prohibited.
16 50-20-232. Procedure for judicial waiver of notice.
17 50-20-235. Criminal and civil penalties.

18
19 **NEW SECTION. Section 15. Codification instruction.** [Sections 1 through 11] 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 [sections
21 1 through 11].

22
23 **NEW SECTION. Section 16. 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 applications,
25 the part remains in effect in all valid applications that are severable from the invalid applications.

26
27 **NEW SECTION. Section 17. Effective date.** [This act] is effective July 1, 2013.

28 - END -