



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5840

Introduced 10/02/06, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

New Act
720 ILCS 515/Act rep.
720 ILCS 520/Act rep.
750 ILCS 70/Act rep.

Creates the Adolescent Health Care Safety Act. Provides that a person may not intentionally perform an abortion on a minor or on an incompetent person unless 48 hours' notice has been given to a specified adult family member or a member of the clergy. Provides for exceptions to the notice requirement, and provides a procedure for obtaining a judicial waiver of the notice requirement. Requires a minor's consent to an abortion, except in the case of a medical emergency. Provides that the provision of information and counseling by a physician or counselor for a pregnant minor for decision making regarding pregnancy shall be in accordance with specified requirements. Requires the Department of Public Health to make certain reports. Provides that a physician who intentionally fails to comply with the Act shall be referred to the Medical Disciplinary Board for any appropriate action. Provides that the unauthorized signing of a waiver of notice or the unlawful disclosure of confidential information is a Class C misdemeanor. Repeals the Parental Notice of Abortion Act of 1995 and re-repeals the Illinois Abortion Parental Consent Act of 1977 and the Parental Notice of Abortion Act of 1983.

LRB094 21666 WGH 60061 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning abortions.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Adolescent Health Care Safety Act.

6 Section 5. Legislative findings and purpose. The General
7 Assembly finds that involvement of a responsible and caring
8 adult family member or clergy as defined in this Act is in the
9 best interest of an unemancipated minor who is making a health
10 care decision about her pregnancy. The General Assembly's
11 purpose in enacting this Act is to further the important State
12 interest in the health of its citizens, including the best
13 interest of an unemancipated minor. When circumstances
14 preclude the involvement of an adult family member or clergy,
15 it is the intent of this Act to create an alternative procedure
16 that ensures that the minor's decisions be informed and in her
17 best interest.

18 Section 10. Definitions. In this Act:

19 "Abortion" means the use of any instrument, medicine, or
20 drug, or any other substance or device, to terminate the
21 pregnancy of a woman known to be pregnant with an intention
22 other than to increase the probability of a live birth or to
23 preserve the life or health of a child after live birth.

24 "Actual notice" means the giving of notice directly, in
25 person or by telephone, and not by facsimile, voice mail, or
26 answering machine message.

27 "Adult family member" means a person over 18 years of age
28 who is:

29 (1) the parent of the minor;

30 (2) a step-parent married to and residing with the
31 custodial parent of the minor;

1 (3) a legal guardian of the minor; or

2 (4) a grandparent, sibling, step-sibling, aunt, or
3 uncle of the minor.

4 "Clergy" means a practitioner of any religious
5 denomination ordained or otherwise accredited by the religious
6 body to which he or she belongs.

7 "Constructive notice" means notice sent by certified mail
8 to the last known address of the person entitled to notice,
9 with delivery deemed to have occurred 48 hours after the notice
10 is mailed.

11 "Counselor" means a person who is a psychiatrist as defined
12 in Section 1-121 of the Mental Health and Developmental
13 Disabilities Code, a clinical psychologist licensed under the
14 Clinical Psychologist Licensing Act, a clinical social worker
15 licensed under Clinical Social Work and Social Work Practice
16 Act, an advanced practice nurse, registered professional
17 nurse, or licensed practical nurse licensed under the Nursing
18 and Advanced Practice Nursing Act, a physician assistant
19 licensed under the Physician Assistant Practice Act of 1987, a
20 professional counselor or clinical professional counselor
21 licensed under the Professional Counselor and Clinical
22 Professional Counselor Licensing Act, or an ordained member of
23 the clergy.

24 "Medical emergency" means a condition that, on the basis of
25 a physician's good faith clinical judgment, so complicates the
26 medical condition of a pregnant woman as to necessitate the
27 immediate abortion of her pregnancy to avert her death or for
28 which a delay will create serious risk to her health.

29 "Minor" means any person under 18 years of age who is not
30 or has not been married or who has not been emancipated under
31 the Emancipation of Mature Minors Act.

32 "Neglect" means the failure of an adult family member to
33 supply a child with necessary food, clothing, shelter, or
34 medical care when reasonably able to do so or the failure to
35 protect a child from conditions or actions that imminently and
36 seriously endanger the child's physical or mental health when

1 reasonably able to do so.

2 "Physical abuse" means any physical injury intentionally
3 inflicted by an adult family member on a child.

4 "Physician" means a person licensed to practice medicine in
5 all its branches under the Medical Practice Act of 1987.

6 "Sexual abuse" means any sexual conduct or sexual
7 penetration as defined in Section 12-12 of the Criminal Code of
8 1961 that is prohibited by the criminal laws of the State of
9 Illinois and committed against a minor by an adult family
10 member as defined in this Act.

11 Section 15. Prohibitions. No person shall intentionally
12 perform an abortion upon a minor unless the person or his or
13 her agent has given at least 48 hours' actual notice to an
14 adult family member of the pregnant minor or a member of the
15 clergy of his or her intention to perform the abortion, unless
16 that person or his or her agent has received a written
17 statement by a referring physician certifying that the
18 referring physician or his or her agent has given at least 48
19 hours' notice to an adult family member of the pregnant minor
20 or incompetent person. If actual notice is not possible after a
21 reasonable effort, the person or his or her agent must give 48
22 hours' constructive notice.

23 Section 20. Exceptions. Notice is not required under this
24 Act if:

25 (1) at the time the abortion is performed, the minor is
26 accompanied by a person entitled to notice under this Act;

27 (2) notice under this Act is waived in writing by a
28 person who is entitled to that notice;

29 (3) the attending physician certifies in the patient's
30 medical record that a medical emergency exists and there is
31 insufficient time to provide the required notice;

32 (4) the minor declares to the physician or to a
33 physician's agent in writing that she is a victim of sexual
34 abuse, neglect, or physical abuse by an adult family member

1 as defined in this Act, in which case (i) the attending
2 physician must certify in the patient's medical record that
3 he or she has received the declaration of abuse or neglect
4 and (ii) any notification of public authorities of abuse
5 that may be required under other laws of this State need
6 not be made by the person performing the abortion until
7 after the minor receives an abortion that otherwise
8 complies with the requirements of this Act; or

9 (5) notice under this Act is waived under Section 25.

10 Section 25. Information and counseling for minors.

11 (a) The provision of information and counseling by any
12 physician or counselor for any pregnant minor for decision
13 making regarding pregnancy shall be in accordance with this
14 Section.

15 (b) Any physician or counselor providing pregnancy
16 information and counseling under this Section shall, in a
17 manner that will be understood by the minor and that shall
18 ensure that the minor, given all surrounding circumstances, is
19 mentally and physically competent to give consent to the
20 abortion procedure or that is in her best interest:

21 (1) explain that the information being given to the
22 minor is being given objectively and is not intended to
23 coerce, persuade, or induce the minor to choose either to
24 have an abortion or to carry the pregnancy to term;

25 (2) discuss the possibility of involving the minor's
26 parents, guardian, or other adult family members in the
27 minor's decision making concerning the pregnancy and
28 explore whether the minor believes that involvement would
29 be in the minor's best interest;

30 (3) clearly and fully explore with the minor the
31 alternative choices available for managing the pregnancy;

32 (4) explain that the minor may withdraw a decision to
33 have an abortion at any time before the abortion is
34 performed or may reconsider a decision not to have an
35 abortion at any time within the time period during which an

1 abortion may legally be performed; and

2 (5) provide adequate opportunity for the minor to ask
3 any questions concerning the pregnancy, abortion, child
4 care, and adoption, and provide the information the minor
5 seeks or, if the person cannot provide the information,
6 indicate where the minor can receive the information.

7 (c) After the person provides the information and
8 counseling to a minor as required by this Section, that person
9 shall have the minor sign and date a form stating that:

10 (1) the minor has received information on prenatal care
11 and alternatives to abortion and that there are agencies
12 that will provide assistance.

13 (2) the minor has discussed with the person providing
14 the information and counseling the possibility of
15 involving the minor's parents, guardian, or other adult
16 family members in the minor's decision making about the
17 pregnancy;

18 (3) the minor has received an explanation that the
19 minor may withdraw an abortion decision or reconsider a
20 decision to carry a pregnancy to term;

21 (4) the alternatives available for managing the
22 pregnancy have been clearly and fully explored with the
23 minor;

24 (5) the minor has received an explanation about
25 agencies available to provide birth control information;

26 (6) the reasons for not involving the minor's parents,
27 guardian, or other adult family members are put in writing
28 on the form by the minor or the person providing the
29 information and counseling; and

30 (7) the minor has been given an adequate opportunity to
31 ask questions.

32 The person providing the information and counseling shall
33 also sign and date the form and include the person's address
34 and telephone number. The person shall keep a copy for that
35 person's files and shall give the form to the minor or, if the
36 minor requests and if the person providing the information is

1 not the attending physician, transmit the form to the minor's
2 attending physician.

3 Section 30. Minor's consent to abortion. A person may not
4 perform an abortion on a minor without the minor's consent,
5 except in a medical emergency.

6 Section 35. Reports. The Department of Public Health must
7 comply with the reporting requirements set forth in the consent
8 decree in *Herbst v. O'Malley*, case no. 84-C-5602 in the U.S.
9 District Court for the Northern District of Illinois, Eastern
10 Division.

11 Section 40. Penalties.

12 (a) A physician who intentionally fails to comply with this
13 Act shall be referred to the Medical Disciplinary Board for any
14 appropriate action.

15 (b) A person, not authorized under this Act, who signs any
16 waiver of notice under this Act for a minor or incompetent
17 person seeking an abortion is guilty of a Class C misdemeanor.

18 (c) A person who discloses confidential information in
19 violation of Section 25 is guilty of a Class C misdemeanor.

20 Section 45. Immunity. A physician who, in good faith,
21 provides notice in accordance with Section 15 or relies on an
22 exception under Section 20 is not subject to any type of civil
23 or criminal liability or discipline for unprofessional conduct
24 for failure to give notice required under this Act.

25 (720 ILCS 515/Act rep.)

26 Section 95. The Illinois Abortion Parental Consent Act of
27 1977, which was repealed by Public Act 89-18, is again
28 repealed.

29 (720 ILCS 520/Act rep.)

30 Section 96. The Parental Notice of Abortion Act of 1983,

1 which was repealed by Public Act 89-18, is again repealed.

2 (750 ILCS 70/Act rep.)

3 Section 97. The Parental Notice of Abortion Act of 1995 is
4 repealed.