S T A T E O F N E W Y O R K

2357

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. REILICH, KOLB, FINCH, RABBITT -- Multi-Sponsored by -- M. of A. ERRIGO, FITZPATRICK, McDONOUGH -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the family court act, in relation to notice of abortions performed on unemancipated minors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative purpose and findings. It is the intent of this legislature in enacting this parental notice provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, protecting the rights of parents to rear children who are members of their household, and protecting the health of minor children.

The legislature finds that immature minors often lack the ability to make fully-informed choices that take account of both immediate and long-range consequences and that the medical, emotional and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature. The legislature further finds that the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related. The legislature finds that parents ordinarily possess information essential to a physician's exercise of his best medical judgment concerning the child and, further, that parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion. The legislature concludes then, that parental consultation is usually desirable and in the best interest of the minor.

S 2. The public health law is amended by adding a new section 2507 to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2507. NOTIFICATION OF ABORTIONS ON UNEMANCIPATED MINORS. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS WILL APPLY:

(A) "UNEMANCIPATED MINOR" MEANS A PERSON WHO HAS NOT ATTAINED THE AGE OF EIGHTEEN YEARS AND IS NOT AN EMANCIPATED MINOR AS DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION.

(B) "EMANCIPATED MINOR" MEANS A MINOR WHO IS OR HAS BEEN LAWFULLY MARRIED OR HAS BY COURT ORDER OR OTHERWISE BEEN FREED FROM THE CARE, CUSTODY AND CONTROL OF HER PARENTS.

(C) "ABORTION" MEANS THE USE OF ANY INSTRUMENT, MEDICINE, DRUG OR ANY OTHER SUBSTANCE OR DEVICE WITH INTENT TO TERMINATE THE PREGNANCY OF A WOMAN KNOWN TO BE PREGNANT WITH INTENT OTHER THAN TO INCREASE THE PROBABILITY OF A LIVE BIRTH, TO PRESERVE THE LIFE OR HEALTH OF THE CHILD AFTER LIVE BIRTH, OR TO REMOVE A DEAD FETUS.

(D) "MEDICAL EMERGENCY" MEANS THAT CONDITION WHICH, ON THE BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF THE PREGNANT MINOR AS TO NECESSITATE THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

2. NOTIFICATION CONCERNING ABORTION. NO PERSON SHALL PERFORM AN ABORTION UPON AN UNEMANCIPATED MINOR UNLESS HE OR SHE OR HIS OR HER AGENT HAS GIVEN AT LEAST FORTY-EIGHT HOURS WRITTEN NOTICE TO A CUSTODIAL PARENT WITH WHOM THE MINOR RESIDES OR TO THE LEGAL GUARDIAN OF THE PREGNANT MINOR OF HIS OR HER INTENTION TO PERFORM THE ABORTION OR UNLESS HE OR SHE OR HIS OR HER AGENT HAS RECEIVED A WRITTEN STATEMENT OR ORAL COMMUNICATION, BY ANOTHER PHYSICIAN, HEREINAFTER CALLED THE "REFERRING PHYSICIAN", CERTIFYING THAT THE REFERRING PHYSICIAN HAS EFFECTUATED SUCH NOTICE. IF THE MINOR'S PARENTS ARE DIVORCED OR LEGALLY SEPARATED, AND A CUSTODIAL PARENT WITH WHOM THE MINOR RESIDES IS NOT AVAILABLE TO THE PERSON PERFORMING THE ABORTION OR THE REFERRING PHYSICIAN IN A REASONABLE TIME OR MANNER, THEN THE NOTICE TO A NON-CUSTODIAL PARENT OR TO THE PARENT WHO IS AVAILABLE SHALL BE SUFFICIENT.

(A) THE WRITTEN NOTICE SHALL BE ADDRESSED TO THE PARENT OR GUARDIAN AT THE USUAL PLACE OF ABODE OF THE PARENT OR GUARDIAN AND DELIVERED PERSONALLY TO THE PARENT OR GUARDIAN BY THE PHYSICIAN OR AN AGENT.

(B) IN LIEU OF THE DELIVERY REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION, NOTICE SHALL BE MADE BY CERTIFIED MAIL ADDRESSED TO THE PARENT OR GUARDIAN AT THE USUAL PLACE OF ABODE OF THE PARENT OR GUARDIAN WITH RETURN RECEIPT REQUESTED WITH RESTRICTED DELIVERY TO THE ADDRESSEE. TIME OF DELIVERY SHALL BE DEEMED TO OCCUR AT 12:00 O'CLOCK NOON ON THE THIRD DAY AFTER MAILING.

3. WAIVER OF NOTICE. NO NOTICE SHALL BE REQUIRED UNDER THIS SECTION IF:

(A) THE ATTENDING PHYSICIAN CERTIFIES IN THE PREGNANT MINOR'S MEDICAL RECORD THAT A MEDICAL EMERGENCY EXISTS; OR

(B) THE PERSON OR PERSONS WHO ARE ENTITLED TO NOTICE CERTIFY IN WRITING THAT THEY HAVE BEEN NOTIFIED; OR

(C) THE MINOR OBJECTS TO NOTICE BEING GIVEN HER CUSTODIAL PARENT WITH WHOM THE MINOR RESIDES OR LEGAL GUARDIAN AND OBTAINS AN ORDER ISSUED BY A JUDGE OF THE FAMILY COURT AS PROVIDED IN ARTICLE TEN-A OF THE FAMILY COURT ACT, OR BY ANY OTHER JUDGE OR JUSTICE OF THIS STATE HAVING JURISDICTION, DISPENSING WITH SUCH NOTICE.

4. COERCION PROHIBITED. NO PARENT, GUARDIAN OR OTHER PERSON SHALL COERCE A MINOR TO UNDERGO AN ABORTION. ANY MINOR WHO IS THREATENED WITH SUCH COERCION MAY APPLY TO A COURT OF COMPETENT JURISDICTION FOR RELIEF.

THE COURT SHALL PROVIDE THE MINOR WITH COUNSEL, GIVE THE MATTER EXPEDITED CONSIDERATION AND GRANT SUCH RELIEF AS MAY BE NECESSARY TO PREVENT SUCH COERCION. SHOULD A MINOR BE DENIED FINANCIAL SUPPORT OF HER PARENTS BY REASON OF HER REFUSAL TO UNDERGO AN ABORTION, SHE SHALL BE CONSIDERED EMANCIPATED FOR PURPOSES OF ELIGIBILITY FOR ASSISTANCE BENEFITS.

5. PENALTIES. ANY PERSON WHO INTENTIONALLY PERFORMS AN ABORTION WITH KNOWLEDGE THAT, OR WITH RECKLESS DISREGARD AS TO WHETHER, THE PERSON UPON WHOM THE ABORTION IS TO BE PERFORMED IS AN UNEMANCIPATED MINOR, AND WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE REQUIREMENTS OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR. IN ADDITION, ANY PERSON WHO PERFORMS AN ABORTION UPON ANOTHER IN VIOLATION OF THIS SECTION SHALL BE SUBJECT TO CIVIL LIABILITY. HOWEVER, A PERSON SHALL NOT BE HELD LIABLE UNDER THIS SECTION IF THE PERSON ESTABLISHES BY WRITTEN EVIDENCE THAT THE PERSON RELIED UPON EVIDENCE SUFFICIENT TO CONVINCE A REASONABLE PERSON THAT THE REPRESENTATIONS OF THE PREGNANT MINOR REGARDING INFORMATION NECESSARY TO COMPLY WITH THIS SECTION ARE BONA FIDE AND TRUE, OR IF THE PERSON HAS ATTEMPTED WITH REASONABLE DILIGENCE TO DELIVER NOTICE, BUT HAS BEEN UNABLE TO DO SO.

S 3. Paragraph (viii) of subdivision (a) of section 213 of the family court act, as amended by chapter 920 of the laws of 1982, is amended and a new paragraph (ix) is added to read as follows:

(viii) the number, nature and disposition of cases involving child abuse under article ten of this act, including total number of new cases, their nature, whether heard by the child abuse part, the age and sex of the children involved, the type of petitioner, the number of children temporarily removed both before and after the filing of a petition, the length of time and number of adjournments between the filing of a petition and the fact-finding hearing, the number of cases that are dismissed, withdrawn, sustained and admitted to, the length of time and number of adjournments between the fact-finding hearing and the dispositional hearing, and the final disposition of such cases[.];

(IX) THE NUMBER AND DISPOSITION OF CASES UNDER ARTICLE TEN-B OF THIS ACT, INCLUDING THE TOTAL NUMBER OF NEW CASES, THE AGE OF THE MINOR INVOLVED, WHETHER THE ORDERS REGARDING NOTIFICATION WERE BASED UPON FINDINGS EITHER THAT THE MINORS WERE MATURE MINORS, AS DEFINED IN SECTION ONE THOUSAND NINETY-SIX OF THIS ACT OR THAT THE ABORTIONS, AS DEFINED IN SECTION TWENTY-FIVE HUNDRED SEVEN OF THE PUBLIC HEALTH LAW, WERE IN THE BEST INTERESTS OF THE MINORS.

S 4. The family court act is amended by adding a new article 10-B to read as follows:

ARTICLE 10-B

PROCEEDING TO OBTAIN AN ORDER WAIVING PARENTAL NOTIFICATION OF AN ABORTION

SECTION 1095. PURPOSES.
1096. DEFINITIONS.
1097. JURISDICTION.
1098. PROCEDURE.

S 1095. PURPOSES. THIS ARTICLE IS INTENDED TO ESTABLISH PROCEDURES TO IMPLEMENT THE PROVISIONS CONTAINED IN SECTION TWENTY-FIVE HUNDRED SEVEN OF THE PUBLIC HEALTH LAW.

S 1096. DEFINITIONS. WHEN USED IN THIS ARTICLE, THE TERM "ABORTION" SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO IT IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION TWENTY-FIVE HUNDRED SEVEN OF THE PUBLIC HEALTH LAW AND THE TERM "MATURE MINOR" SHALL MEAN A PERSON UNDER THE AGE OF EIGHTEEN WHO HAS NOT BEEN EMANCIPATED AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION TWENTY-FIVE HUNDRED SEVEN OF THE PUBLIC

HEALTH LAW AND WHO IS ABLE TO MAKE AN INFORMED, REASONED AND CONSIDERED JUDGMENT IN CONNECTION WITH A DECISION WHETHER OR NOT TO PROCEED WITH THE ABORTION.

S 1097. JURISDICTION. THE FAMILY COURT HAS EXCLUSIVE ORIGINAL JURISDICTION OVER PROCEEDINGS UNDER THIS ARTICLE TO OBTAIN AN ORDER WAIVING PARENTAL NOTIFICATION OF AN ABORTION.

S 1098. PROCEDURE. NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

1. THE WAIVER OF PARENTAL NOTIFICATION TO AN ABORTION UPON OR WITH THE RESPECT TO AN UNEMANCIPATED MINOR MAY BE OBTAINED BY ORDER OF A JUDGE OF THE FAMILY COURT IN THE COUNTY WHERE SUCH PERSON RESIDES OR IF SHE IS NOT A RESIDENT OF THIS STATE, IN THE COUNTY WHERE THE ABORTION IS TO BE PERFORMED, ON APPLICATION BY SUCH PERSON OR BY A RELATIVE OF SUCH PERSON OR OTHER INTERESTED PARTY.

2. SUCH COURT PROCEEDINGS SHALL BE COMMENCED EX PARTE AND MAY BE COMMENCED AND CONTINUED WITHOUT THE PAYMENT OF ANY FEES. THE COURT SHALL ADVISE THE MINOR THAT SHE HAS A RIGHT TO COURT-APPOINTED COUNSEL AND SHALL PROVIDE HER WITH SUCH COUNSEL UPON HER REQUEST.

3. SUCH APPLICATION SHALL BE GIVEN IMMEDIATE CONSIDERATION AND A HEARING SHALL BE HELD IMMEDIATELY AT WHICH THE PERSON UPON OR WITH RESPECT TO WHOM THE ABORTION IS TO BE PERFORMED SHALL BE PRESENT. THE COURT SHALL ISSUE WRITTEN AND SPECIFIC FACTUAL FINDINGS AND LEGAL CONCLUSIONS SUPPORTING ITS DECISION AND SHALL ORDER THAT A CONFIDENTIAL RECORD OF THE EVIDENCE BE MAINTAINED. ALL PROCEEDINGS WITH RESPECT TO SUCH APPLICATION, INCLUDING AN APPEAL THEREFROM, SHALL PROTECT THE ANONYMITY OF THE MINOR. SAID PROCEEDINGS SHALL BE SEALED, AND NO PERSON SHALL BE ALLOWED ACCESS TO SUCH SEALED RECORDS EXCEPT UPON AN ORDER OF A JUDGE OF THE COURT IN WHICH THE APPLICATION WAS PROCESSED OR OF A JUSTICE OF THE SUPREME COURT OF THE JUDICIAL DISTRICT, AND NO SUCH ORDER SHALL BE GRANTED EXCEPT ON GOOD CAUSE SHOWN.

4. AN ORDER SHALL ISSUE ONLY UPON FINDING BY THE COURT (A) THAT SUCH PERSON PRESENTLY DESIRES TO SUBMIT TO SUCH ABORTION; (B) THAT SUCH PERSON IS EITHER A MATURE MINOR OR THAT SUCH ABORTION IS IN THE BEST INTEREST OF SUCH PERSON; AND (C) THAT A PREVIOUS APPLICATION FOR SUCH ORDER HAS NOT BEEN MADE AND DENIED UPON THE SAME GROUNDS. IF THE COURT SO FINDS, THE ORDER MUST ISSUE.

5. IN THE EVENT THAT THE COURT SHALL DENY THE APPLICATION FOR THE ORDER, AN EXPEDITED ANONYMOUS APPEAL SHALL BE AVAILABLE TO SUCH APPLICANT TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE JUDICIAL DEPARTMENT IN WHICH THE COURT WHICH RENDERED THE DECISION IS LOCATED. THE NOTICE OF INTENT TO APPEAL SHALL BE FILED WITHIN TWENTY-FOUR HOURS FROM THE DATE OF ISSUANCE OF THE ORDER. THE RECORD ON APPEAL SHALL BE COMPLETED AND THE APPEAL SHALL BE PERFECTED WITHIN FIVE DAYS FROM THE FILING OF THE NOTICE TO APPEAL. BECAUSE TIME MAY BE OF THE ESSENCE REGARDING THE PERFORMANCE OF THE ABORTION, THE SUPREME COURT SHALL, BY COURT RULE, PROVIDE FOR EXPEDITED APPELLATE REVIEW OF CASES APPEALED UNDER THIS SECTION.

6. THE SUPREME COURT SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO ENSURE THAT PROCEEDINGS UNDER THIS SECTION ARE HANDLED IN AN EXPEDITIOUS AND ANONYMOUS MANNER.

7. THE SUPREME COURT, IN ITS DISCRETION, MAY ISSUE SUCH OTHER AND FURTHER LAWFUL ORDERS AS IT DEEMS NECESSARY TO PROTECT SUCH PERSON.

S 5. Separability. If any clause, sentence, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause,

sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 6. This act shall take effect on the ninetieth day after it shall have become a law.