

CHAPTER 355

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 03-1376

BY REPRESENTATIVE(S) Harvey, May M., Hefley, Schultheis, Lundberg, Brophy, Cadman, Carroll, Clapp, Cloer, Coleman, Crane, Decker, Fairbank, Hall, Hoppe, King, Lee, Miller, Mitchell, Rhodes, Rose, Salazar, Sinclair, Smith, Spence, Stafford, Stengel, White, Wiens, Williams T., Witwer, and Fritz;
also SENATOR(S) Cairns, May R., Johnson S., McElhany, Andrews, Arnold, Evans, Hillman, Jones, Lamborn, Nichol, Teck.

AN ACT**CONCERNING AMENDMENTS TO THE "COLORADO PARENTAL NOTIFICATION ACT" TO ADDRESS LEGAL CONCERNS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The Colorado General Assembly passed House Bill 03-1376 to restore article 37.5 of title 12, Colorado Revised Statutes, to reflect the will of the people of the State of Colorado. In November, 1998, the voters of the state of Colorado passed the "Colorado Parental Notification Act", article 37.5 of title 12, Colorado Revised Statutes. On April 17, 2002, the Tenth Circuit Court of Appeals upheld the United States District Court for the District of Colorado's decision that the "Colorado Parental Notification Act" is facially unconstitutional. The General Assembly, in response to the Tenth Circuit Court of Appeal's opinion, adopted House Bill 03-1376 to address the constitutional defect cited by both the Tenth Circuit Court of Appeals and the United States District Court for the District of Colorado, as well as other constitutional concerns raised by the litigation, but not addressed by the court.

(2) It is the intent of the General Assembly that article 37.5 of title 12, Colorado Revised Statutes, as amended by House Bill 03-1376 be effective and enforced from the effective date of House Bill 03-1376.

SECTION 2. 12-37.5-103 (3), Colorado Revised Statutes, is amended, and the said 12-37.5-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-37.5-103. Definitions. As used in this article, unless the context otherwise

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

requires:

(3) "Abortion" for purposes of this article means the use of any means to terminate the pregnancy of a minor with knowledge that the termination by those means will, with reasonable likelihood, cause the death of ~~that person's unborn offspring at any time after fertilization~~ THE MINOR'S UNBORN OFFSPRING.

(4) "CLERGY MEMBER" MEANS A PRIEST, A RABBI, A DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTER OF A CHURCH, A MEMBER OF A RELIGIOUS ORDER, OR A RECOGNIZED LEADER OF ANY RELIGIOUS BODY.

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

(6) "RELATIVE OF THE MINOR" MEANS A MINOR'S GRANDPARENT, ADULT AUNT, OR ADULT UNCLE, IF THE MINOR IS NOT RESIDING WITH A PARENT AND RESIDES WITH THE GRANDPARENT, ADULT AUNT, OR ADULT UNCLE.

SECTION 3. 12-37.5-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-37.5-104. Notification concerning abortion. (2) (a) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, IF THE MINOR IS RESIDING WITH A RELATIVE OF THE MINOR AND NOT A PARENT, THE WRITTEN NOTICE OF THE PENDING ABORTION SHALL BE PROVIDED TO EITHER THE RELATIVE OF THE MINOR OR A PARENT.

(b) IF A MINOR ELECTS TO PROVIDE NOTICE TO A PERSON SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2), THE NOTICE SHALL BE PROVIDED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION.

SECTION 4. 12-37.5-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-37.5-104. Notification concerning abortion. (3) AT THE TIME THE PHYSICIAN, LICENSED HEALTH CARE PROFESSIONAL, OR STAFF OF THE PHYSICIAN OR LICENSED HEALTH CARE PROFESSIONAL INFORMS THE MINOR THAT NOTICE MUST BE PROVIDED TO THE MINOR'S PARENTS PRIOR TO PERFORMING AN ABORTION, THE PHYSICIAN, LICENSED HEALTH CARE PROFESSIONAL, OR THE STAFF OF THE PHYSICIAN OR LICENSED HEALTH CARE PROFESSIONAL MUST INFORM THE MINOR UNDER WHAT CIRCUMSTANCES THE MINOR HAS THE RIGHT TO HAVE ONLY ONE PARENT NOTIFIED.

SECTION 5. 12-37.5-104 (1) (a) (III), Colorado Revised Statutes, is amended, and the said 12-37.5-104 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

12-37.5-104. Notification concerning abortion. (1) No abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice

of the pending abortion has been delivered in the following manner:

(a) The notice shall be addressed to the parent at the dwelling house or usual place of abode of the parent. Such notice shall be delivered to the parent by:

(III) By any other person over the age of eighteen years who is not related to the minor; OR

(IV) BY A CLERGY MEMBER WHO IS OVER THE AGE OF EIGHTEEN.

SECTION 6. 12-37.5-105, Colorado Revised Statutes, is amended to read:

12-37.5-105. No notice required - when. (1) No notice shall be required pursuant to this article if:

(a) The person or persons who ~~are entitled to~~ MAY RECEIVE notice PURSUANT TO SECTION 12-37.5-104 (1) certify in writing that they have been notified; OR

(a.5) THE PERSON WHOM THE MINOR ELECTS TO NOTIFY PURSUANT TO SECTION 12-37.5-104 (2) CERTIFIES IN WRITING THAT HE OR SHE HAS BEEN NOTIFIED; OR

(b) The pregnant minor declares that she is a victim of child abuse or neglect by the acts or omissions of the person who would be entitled to notice, as such acts or omissions are defined in "The Child Protection Act of 1987", as set forth in title 19, article 3, of the Colorado Revised Statutes, and any amendments thereto, and the attending physician has reported such child abuse or neglect as required by the said act. WHEN REPORTING SUCH CHILD ABUSE OR NEGLECT, THE PHYSICIAN SHALL NOT REVEAL THAT HE OR SHE LEARNED OF THE ABUSE OR NEGLECT AS THE RESULT OF THE MINOR SEEKING AN ABORTION; OR

(c) THE ATTENDING PHYSICIAN CERTIFIES IN THE PREGNANT MINOR'S MEDICAL RECORD THAT A MEDICAL EMERGENCY EXISTS AND THERE IS INSUFFICIENT TIME TO PROVIDE NOTICE PURSUANT TO SECTION 12-37.5-104; OR

(d) A VALID COURT ORDER IS ISSUED PURSUANT TO SECTION 12-37.5-107.

SECTION 7. 12-37.5-106 (1) and the introductory portion to 12-37.5-106 (2), Colorado Revised Statutes, are amended to read:

12-37.5-106. Penalties - damages - defenses. (1) Any person who performs or attempts to perform an abortion in willful violation of this article:

(a) ~~Commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501 C.R.S.; and~~

(b) Shall be liable for damages proximately caused thereby.

(2) It shall be an affirmative defense to any ~~criminal~~ or civil proceedings if the person establishes that:

SECTION 8. 12-37.5-107, Colorado Revised Statutes, is amended to read:

12-37.5-107. Judicial bypass. (1) ~~If section 12-37.5-104 of this article is ever temporarily, preliminarily, or permanently restrained or enjoined due to the absence of a judicial bypass provision, the said section shall be enforced as though the following provisions were incorporated as subsection (2) of section 104, provided however that, if any such restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, section 104 shall have full force and effect without the addition of the following subsection (2):~~

(2) (a) If any pregnant minor elects not to allow the notification ~~of any parent~~ REQUIRED PURSUANT TO SECTION 12-37.5-104, any judge of a court of competent jurisdiction ~~may~~ SHALL, upon petition filed by or on behalf of such minor, enter an order dispensing with the notice requirements of this article if the judge determines that the giving of such notice will not be in the best interest of the minor, or if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion. Any such order shall include specific factual findings and legal conclusions in support thereof and a certified copy of such order shall be provided to the attending physician of said minor and the provisions of section 12-37.5-104 (1) and section 12-37.5-106 ~~of this article~~ shall not apply to the physician with respect to such minor.

(b) The court, in its discretion, may appoint a guardian ad litem for the minor and also an attorney if said minor is not represented by counsel.

(c) ~~All court proceedings herein shall be confidential and shall be given preference over other pending matters, so that the court may reach a decision without undue delay.~~ COURT PROCEEDINGS UNDER THIS SUBSECTION (2) SHALL BE CONFIDENTIAL AND SHALL BE GIVEN PRECEDENCE OVER OTHER PENDING MATTERS SO THAT THE COURT MAY REACH A DECISION PROMPTLY WITHOUT DELAY IN ORDER TO SERVE THE BEST INTERESTS OF THE MINOR. COURT PROCEEDINGS UNDER THIS SUBSECTION (2) SHALL BE HEARD AND DECIDED AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN FOUR DAYS AFTER THE PETITION IS FILED.

(d) ~~An expedited confidential appeal shall be available to any such minor for whom the court denies an order dispensing with notification as required by this article. Upon the minor's representation as contained in her petition, or otherwise, that no funds are available to her for payment of filing fees, no filing fees shall be required in either the trial court or appellate court.~~ NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN EXPEDITED CONFIDENTIAL APPEAL TO THE COURT OF APPEALS SHALL BE AVAILABLE TO A MINOR FOR WHOM THE COURT DENIES AN ORDER DISPENSING WITH THE NOTICE REQUIREMENTS OF THIS ARTICLE. ANY SUCH APPEAL SHALL BE HEARD AND DECIDED NO LATER THAN FIVE DAYS AFTER THE APPEAL IS FILED. AN ORDER DISPENSING WITH THE NOTICE REQUIREMENTS OF THIS ARTICLE SHALL NOT BE SUBJECT TO APPEAL.

(e) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE MINOR IS NOT REQUIRED TO PAY A FILING FEE RELATED TO AN ACTION OR APPEAL FILED PURSUANT TO THIS SUBSECTION (2).

(f) IF EITHER THE DISTRICT COURT OR THE COURT OF APPEALS FAILS TO ACT WITHIN THE TIME PERIODS REQUIRED BY THIS SUBSECTION (2), THE COURT IN WHICH THE PROCEEDING IS PENDING SHALL IMMEDIATELY ISSUE AN ORDER DISPENSING WITH THE

NOTICE REQUIREMENTS OF THIS ARTICLE.

(g) THE COLORADO SUPREME COURT SHALL ISSUE RULES GOVERNING THE JUDICIAL BYPASS PROCEDURE, INCLUDING RULES THAT ENSURE THAT THE CONFIDENTIALITY OF MINORS FILING BYPASS PETITIONS WILL BE PROTECTED. THE COLORADO SUPREME COURT SHALL ALSO PROMULGATE A FORM PETITION THAT MAY BE USED TO INITIATE A BYPASS PROCEEDING. THE COLORADO SUPREME COURT SHALL PROMULGATE THE RULES AND FORM GOVERNING THE JUDICIAL BYPASS PROCEDURE BY AUGUST 1, 2003. PHYSICIANS SHALL NOT BE REQUIRED TO COMPLY WITH THIS ARTICLE UNTIL FORTY-FIVE DAYS AFTER THE COLORADO SUPREME COURT PUBLISHES FINAL RULES AND A FINAL FORM.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2003