

JAN 21 2011

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## A BILL FOR AN ACT

RELATING TO PARENTAL NOTIFICATION BEFORE AN ABORTION MAY BE  
PERFORMED ON CERTAIN MINORS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4                                   **"CHAPTER**

5   **PARENTAL NOTICE OF ABORTION**

6           § -1 **Definitions.** In this chapter:

7           "Abortion" means the use of any means to terminate the  
8 pregnancy of a female known by the attending physician to be  
9 pregnant, with the intention that the termination of the  
10 pregnancy by those means will cause with reasonable likelihood  
11 the death of the fetus. This definition applies only to an  
12 unemancipated minor known by the attending physician to be  
13 pregnant and may not be construed to limit a minor's access to  
14 contraceptives.

15           "Department" means the department of health.

16           "Director" means the director of health.



1 "Fetus" means an individual human organism from  
2 fertilization until birth.

3 "Guardian" means a court-appointed guardian of the person  
4 of the minor.

5 "Physician" means an individual licensed to practice  
6 medicine in this State.

7 § -2 **Parental notice.** (a) A physician may not perform  
8 an abortion on a pregnant unemancipated minor unless:

9 (1) The physician performing the abortion gives at least  
10 seventy-two hours actual notice, in person or by  
11 telephone, of the physician's intent to perform the  
12 abortion to:

13 (A) A parent of the minor, if the minor has no  
14 guardian; or

15 (B) A court-appointed guardian;

16 (2) The judge of a family district court or the  
17 intermediate appellate court issues an order  
18 authorizing the minor to consent to the abortion as  
19 provided by section -3 or -4;

20 (3) A family court or the intermediate appellate court, by  
21 its inaction, constructively authorizes the minor to



1 consent to the abortion as provided by section -3 or  
2 -4; or

3 (4) The physician performing the abortion:

4 (A) Concludes that, on the basis of the physician's  
5 good faith clinical judgment, a condition exists  
6 that complicates the medical condition of the  
7 pregnant minor and necessitates the immediate  
8 abortion of pregnancy to avert the minor's death  
9 or to avoid a serious risk of substantial and  
10 irreversible impairment of a major bodily  
11 function; and

12 (B) Certifies in writing to the director and in the  
13 patient's medical record the medical indications  
14 supporting the physician's judgment that the  
15 circumstances described by paragraph (A) exist.  
16 The director shall prepare a form to be used for  
17 making the certification required by this  
18 subsection.

19 For purposes of this chapter, the term "unemancipated minor"  
20 shall not include a minor who is married.

21 (b) If a person to whom notice may be given under  
22 subsection (a) (1) cannot be given actual notice after a

1 reasonable effort which shall be documented in the minor's  
2 medical record, a physician may perform an abortion if the  
3 physician sends constructive notice, at least seventy-two hours  
4 prior to the procedure, by United States Postal Service  
5 certified mail, restricted delivery, to the last known address  
6 of the person to whom notice may be given under subsection  
7 (a)(1). If constructive notice is properly mailed the abortion  
8 may proceed.

9 (c) The requirement that seventy-two hours actual notice  
10 be provided under this section may be waived by an affidavit of:

11 (1) A parent of the minor, if the minor has no guardian;  
12 or

13 (2) A court-appointed guardian.

14 (d) A physician may execute, for inclusion in the minor's  
15 medical record, an affidavit stating that, according to the best  
16 information and belief of the physician, actual or constructive  
17 notice has been provided as required by this section. Execution  
18 of an affidavit under this subsection creates a presumption that  
19 the requirements of this section have been satisfied.

20 (e) A certification required by subsection (a)(4) is  
21 confidential and privileged and is not subject to disclosure  
22 under chapter 92F, or to discovery, subpoena, or other legal



1 process. Personal or identifying information about the minor,  
2 including name, address, or social security number, may not be  
3 included in a certification under subsection (a)(4). The  
4 physician shall keep the medical records on the minor in  
5 compliance with the rules adopted by the board of medical  
6 examiners.

7 (f) A physician who intentionally performs an abortion on  
8 a pregnant unemancipated minor in violation of this section  
9 shall be fined not more than \$10,000 for each separate offense.  
10 Any action taken to impose or collect the penalty provided for  
11 in this section shall be considered a civil action.  
12 "Intentionally" as used herein has the same meaning as in  
13 section 702-206.

14 (g) It is a defense to civil action under this section  
15 that the minor falsely represented age or identity to the  
16 physician by displaying an apparently valid governmental record  
17 of identification such that a reasonable person under similar  
18 circumstances would have relied on the representation. The  
19 defense does not apply if the physician is shown to have had  
20 independent knowledge of the minor's actual age or identity or  
21 failed to use due diligence in determining the minor's age or



1 identity. In this subsection, "defense" has the same meaning as  
2 in section 701-115.

3 (h) In relation to the trial of an offense under this  
4 section in which the conduct charged involves a conclusion made  
5 by the physician under subsection (a)(4), the defendant may seek  
6 a hearing before the board of medical examiners on whether the  
7 physician's conduct was necessary to avert the death of the  
8 minor or to avoid a serious risk of substantial and irreversible  
9 impairment of a major bodily function. The findings of the  
10 board of medical examiners under this subsection are admissible  
11 on that issue at trial. Notwithstanding any other reason for a  
12 continuance provided by law, on motion of the defendant, the  
13 court shall delay the beginning of the trial for not more than  
14 thirty days to permit a hearing under this subsection to take  
15 place.

16 § -3 **Judicial approval.** (a) A pregnant minor who wishes  
17 to have an abortion without notification to one of the minor's  
18 parents or the minor's guardian may file an application for a  
19 court order authorizing the minor to consent to the performance  
20 of an abortion without notification to either parent or a  
21 guardian.



1 (b) The application may be filed with any family court in  
2 this State.

3 (c) The application must be made under oath and include:

4 (1) A statement that the minor is pregnant;

5 (2) A statement that the minor is unmarried and is under  
6 eighteen years of age;

7 (3) A statement that the minor wishes to have an abortion  
8 without the notification of either parent or a  
9 guardian; and

10 (4) A statement as to whether the minor has retained an  
11 attorney and, if the minor has retained an attorney,  
12 the name, address, and telephone number of the  
13 attorney.

14 (d) The court shall appoint a guardian ad litem for the  
15 minor. If the minor has not retained an attorney, the court  
16 shall appoint an attorney to represent the minor. If the  
17 guardian ad litem is an attorney admitted to the practice of law  
18 in this State, the court may appoint the guardian ad litem to  
19 also serve as the minor's attorney.

20 (e) The court may appoint to serve as guardian ad litem:

21 (1) A person who may consent to treatment for the minor as  
22 provided by law;



1           (2) A psychiatrist or an individual licensed or certified  
2                    as a psychologist in this State;

3           (3) An appropriate employee of the department of human  
4                    services;

5           (4) A member of the clergy; or

6           (5) Another appropriate person selected by the court.

7           (f) The court shall fix a time for a hearing on an  
8 application filed under subsection (a) and shall keep a record  
9 of all testimony and other oral proceedings in the action. The  
10 court shall enter judgment on the application immediately after  
11 the hearing is concluded.

12           (g) The court shall rule on an application submitted under  
13 this section and shall issue written findings of fact and  
14 conclusions of law not later than 5:00 p.m. on the second  
15 business day after the date the application is filed with the  
16 court. On request by the minor, the court shall grant an  
17 extension of the period specified by this subsection. If a  
18 request for an extension is made, the court shall rule on an  
19 application and shall issue written findings of fact and  
20 conclusions of law not later than 5:00 p.m. on the second  
21 business day after the date the minor states that the minor is  
22 ready to proceed to hearing. If the court fails to rule on the





1 application and issue written findings of fact and conclusions  
2 of law within the period specified by this subsection, the  
3 application is deemed to be granted and the physician may  
4 perform the abortion as if the court had issued an order  
5 authorizing the minor to consent to the performance of the  
6 abortion without notification under section -2. Proceedings  
7 under this section shall be given precedence over other pending  
8 matters to the extent necessary to ensure that the court reaches  
9 a decision promptly.

10 (h) The court shall determine by a preponderance of the  
11 evidence whether notification would not be in the best interest  
12 of the minor or whether notification may lead to physical or  
13 sexual abuse of the minor. If the court finds that notification  
14 would not be in the minor's best interest, or that notification  
15 may lead to physical or sexual abuse of the minor, the court  
16 shall enter an order authorizing the minor to consent to the  
17 performance of the abortion without notification to either  
18 parent or a guardian and shall execute the required forms.

19 (i) If the court finds that the minor does not meet the  
20 requirements of subsection (h), the court may not authorize the  
21 minor to consent to an abortion without the notification  
22 authorized under section -2.



1           (j) The court may not notify a parent or guardian that the  
2 minor is pregnant or that the minor wants to have an abortion.  
3 The court proceedings shall be conducted in a manner that  
4 protects the anonymity of the minor. The application and all  
5 other court documents pertaining to the proceedings are  
6 confidential and privileged and are not subject to disclosure  
7 under chapter 92F, or to discovery, subpoena, or other legal  
8 process. The minor may file the application using a pseudonym  
9 or using only initials.

10           (k) An order of the court issued under this section is  
11 confidential and privileged and is not subject to disclosure  
12 under chapter 92F, or discovery, subpoena, or other legal  
13 process. The order may not be released by the court to any  
14 person but the pregnant minor, and, as appropriate, the pregnant  
15 minor's guardian ad litem, the pregnant minor's attorney,  
16 another person designated to receive the order by the minor, or  
17 a governmental agency or attorney in a judicial or  
18 administrative action seeking to assert or protect the interest  
19 of the minor. The supreme court may adopt rules to permit  
20 confidential docketing of an application under this section.



1           (1) The clerk of the family court shall prescribe the  
2 application form to be used by the minor filing an application  
3 under this section.

4           (m) A filing fee is not required of and court costs may  
5 not be assessed against a minor filing an application under this  
6 section.

7           § -4 **Appeal.** (a) A minor whose application under  
8 section -3 is denied may appeal to the intermediate appellate  
9 court. On receipt of a notice of appeal, the clerk of the court  
10 that denied the application shall, within an expeditious time  
11 frame to be set by the supreme court, provide a copy of the  
12 notice of appeal and record on appeal to the clerk of the  
13 intermediate appellate court. On receipt of the notice and  
14 record, the clerk of the intermediate appellate court shall  
15 place the appeal on the docket of the court.

16           (b) The intermediate appellate court shall rule on an  
17 appeal under this section not later than 5:00 p.m. on the second  
18 business day after the date the notice of appeal is filed with  
19 the court that denied the application. On request by the minor,  
20 the court shall grant an extension of the period specified by  
21 this subsection. If a request for an extension is made, the  
22 court shall rule on the appeal not later than 5:00 p.m. on the



1 second business day after the date the minor states that the  
2 minor is ready to proceed. If the intermediate appellate court  
3 fails to rule on the appeal within the period specified by this  
4 subsection, the appeal is deemed to be granted and the physician  
5 may perform the abortion as if the court had issued an order  
6 authorizing the minor to consent to the performance of the  
7 abortion without notification under section -2. Proceedings  
8 under this section shall be given precedence over other pending  
9 matters to the extent necessary to ensure that the court reaches  
10 a decision promptly.

11 (c) A ruling of the intermediate appellate court under  
12 this section is confidential and privileged and is not subject  
13 to disclosure under chapter 92F, or discovery, subpoena, or  
14 other legal process. The ruling may not be released by the  
15 court to any person but the pregnant minor, and, as appropriate,  
16 the pregnant minor's guardian ad litem, the pregnant minor's  
17 attorney, another person designated to receive the ruling by the  
18 minor, or a governmental agency or attorney in a judicial or  
19 administrative action seeking to assert or protect the interest  
20 of the minor.



1 (d) The clerk of the intermediate appellate court shall  
2 prescribe the notice of appeal form to be used by the minor  
3 appealing a judgment under this section.

4 (e) A filing fee is not required of and court costs may  
5 not be assessed against a minor filing an appeal under this  
6 section.

7 § -5 Rules. The supreme court may adopt rules to permit  
8 confidential docketing of a judicial and appellate procedures  
9 and time limits under this chapter.

10 § -6 Affidavit of physician. (a) A physician may  
11 execute for inclusion in the minor's medical record an affidavit  
12 stating that, after reasonable inquiry, it is the belief of the  
13 physician that:

14 (1) The minor has made an application or filed a notice of  
15 an appeal with a court under this chapter;

16 (2) The deadline for court action imposed by this chapter  
17 has passed; and

18 (3) The physician has been notified that the court has not  
19 denied the application or appeal.

20 (b) A physician who in good faith has executed an  
21 affidavit under subsection (a) may rely on the affidavit and may



1 perform the abortion as if the court had issued an order  
2 granting the application or appeal.

3 § -7 **Guardian ad litem immunity.** A guardian ad litem  
4 appointed under this chapter and acting in the course and scope  
5 of the appointment is not liable for damages arising from an act  
6 or omission of the guardian ad litem committed in good faith.

7 § -8 **Costs paid by State.** (a) A court acting under  
8 section -3 or -4 may issue an order requiring the State to  
9 pay:

10 (1) The cost of any attorney and any guardian ad litem  
11 appointed for the minor;

12 (2) Notwithstanding sections -3(m) and -4(e), the costs  
13 of court associated with the application or appeal;  
14 and

15 (3) Any court reporter's fees incurred.

16 (b) An order issued under subsection (a) must be directed  
17 to the director of finance, who shall pay the amount ordered  
18 from funds appropriated to the department.

19 § -9 **Physician's duty to report abuse of a minor;**  
20 **investigation and assistance.** (a) A physician who, as a result  
21 of services provided under this chapter, has reason to believe  
22 that a minor has been or may be physically or sexually abused by



1 a person responsible for the minor's care, custody, or welfare,  
2 shall immediately report the suspected abuse to the department  
3 of human services and shall refer the minor to the department of  
4 human services for services or intervention that may be in the  
5 best interest of the minor.

6 (b) The department of human services shall investigate  
7 suspected abuse reported under this section and, if appropriate,  
8 shall assist the minor in making an application with a court  
9 under section -3.

10 § -10 Other reports of sexual abuse of a minor.

11 Notwithstanding any other law or professional standards of  
12 conduct to the contrary, a court or the guardian ad litem or  
13 attorney for the minor shall report conduct reasonably believed  
14 to constitute an offense under part V of chapter 707, based on  
15 information obtained during a confidential court proceeding held  
16 under this chapter to:

- 17 (1) Any county or state law enforcement agency;
- 18 (2) The department of human services, if the alleged  
19 conduct involves a person responsible for the care,  
20 custody, or welfare of the child;
- 21 (3) The state agency that operates, licenses, certifies,  
22 or registers the facility in which the alleged conduct



1            occurred, if the alleged conduct occurred in a  
2            facility operated, licensed, certified, or registered  
3            by a state agency; or

4            (4) An appropriate agency designated by the court.

5            § -11 **Confidentiality.** Notwithstanding any other law,  
6            information obtained by the department of human services or  
7            another entity under section -9 or -10 is confidential except  
8            to the extent necessary to prove an offense under part V of  
9            chapter 707.

10           § -12 **Information relating to judicial bypass.** The  
11           department shall produce and distribute informational materials  
12           that explain the rights of a minor under this chapter. The  
13           materials shall explain the procedures established by sections  
14           -3 and -4 and provide information relating to alternatives to  
15           abortion and health risks associated with abortion."

16           SECTION 2. If any provision of this Act, or the  
17           application thereof to any person or circumstance is held  
18           invalid, the invalidity does not affect other provisions or  
19           applications of the Act, which can be given effect without the  
20           invalid provision or application, and to this end the provisions  
21           of this Act are severable.

22           SECTION 3. This Act shall take effect upon its approval.





S.B. NO. 859

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INTRODUCED BY:

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**Report Title:**

Abortion; Parental Notice

**Description:**

Prohibits a physician from performing an abortion on a minor unless the physician has given proper notice to the minor's parent or guardian, a family court or appellate court authorizes the minor to consent, or the physician concludes that an abortion is necessary to avoid death or a serious risk of substantial and irreversible impairment of a major bodily function. Prescribes procedures for obtaining judicial approval.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

