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HOUSE BILL 2617

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State of Washington

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2004 Regular Session

By Representatives Schindler, Bush, Talcott, Miloscia, Boldt, Cox, Holmquist, Kristiansen, McMorris, Benson, Mielke, Ahern, Campbell, Carrell and McMahan

Read first time 01/16/2004. Referred to Committee on Health Care.

1 AN ACT Relating to requiring parental notification for abortion;  
2 adding a new section to chapter 9.02 RCW; prescribing penalties; and  
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.02 RCW  
6 to read as follows:

7 (1) Except in a medical emergency, or except as provided in this  
8 section, if a pregnant woman is less than eighteen years of age and not  
9 emancipated, or if she has been adjudged an incapacitated person, a  
10 physician shall not perform an abortion upon her unless at least forty-  
11 eight hours before the abortion, in the case of a woman who is less  
12 than eighteen years of age, he or she first notifies one of her  
13 parents; or, in the case of a woman who is an incapacitated person, he  
14 or she first notifies one of her guardians. In the case of a pregnancy  
15 that is the result of incest where the father is a party to the  
16 incestuous act, the physician need only notify the pregnant woman's  
17 mother or guardian.

18 (2) If both parents have died or are otherwise unavailable to the  
19 physician within at least twenty-four hours, notification of the

1 pregnant woman's guardian or guardians is sufficient. If the pregnant  
2 woman's parents are divorced, notification of the parent having custody  
3 is sufficient. If neither parent nor the guardian is available to the  
4 physician within twenty-four hours, notification of any adult person  
5 standing in loco parentis is sufficient.

6 (3) If the pregnant woman elects not to allow the notification of  
7 either of her parents or of her guardian, the superior court in which  
8 the applicant resides or in which the abortion is sought shall, upon  
9 petition or motion, after an appropriate hearing, authorize a physician  
10 to perform the abortion if the court determines that the pregnant woman  
11 is mature and capable of giving informed consent to the proposed  
12 abortion, and has, in fact, given such consent.

13 (4) If the court determines that the pregnant woman is not mature  
14 and capable of giving informed consent or if the pregnant woman does  
15 not claim to be mature and capable of giving informed consent, the  
16 court shall determine whether the performance of an abortion upon her  
17 would be in her best interests. If the court determines that the  
18 performance of an abortion would be in the best interests of the woman,  
19 it shall authorize a physician to perform the abortion.

20 (5) The pregnant woman may participate in proceedings in the court  
21 on her own behalf and the court may appoint a guardian ad litem to  
22 assist her. The court shall, however, advise her that she has a right  
23 to court-appointed counsel, and shall provide her with such counsel  
24 unless she wishes to appear with private counsel or has knowingly and  
25 intelligently waived representation by counsel.

26 (6)(a) Court proceedings under this section are confidential and  
27 shall be given such precedence over other pending matters as will  
28 ensure that the court may reach a decision promptly and without delay  
29 in order to serve the best interests of the pregnant woman. In no case  
30 shall the court fail to rule within three business days of the date of  
31 application. A court that conducts proceedings under this section  
32 shall make in writing specific factual findings and legal conclusions  
33 supporting its decision and shall, upon the initial filing of the  
34 minor's petition for judicial authorization of an abortion, order a  
35 sealed record of the petition, pleadings, submissions, transcripts,  
36 exhibits, orders, evidence, and any other written material to be  
37 maintained which shall include its own findings and conclusions.

1 (b) The application to the court shall be accompanied by a  
2 nonnotarized verification stating that the information therein is true  
3 and correct to the best of the applicant's knowledge, and the  
4 application shall set forth the following facts:

5 (i) The initials of the pregnant woman;

6 (ii) The age of the pregnant woman;

7 (iii) The names and addresses of each parent, guardian or, if the  
8 minor's parents are deceased and no guardian has been appointed, any  
9 other person standing in loco parentis to the minor;

10 (iv) That the pregnant woman has been fully informed of the risks  
11 and consequences of the abortion;

12 (v) Whether the pregnant woman is of sound mind and has sufficient  
13 intellectual capacity to consent to the abortion;

14 (vi) A motion asking the court to either grant the pregnant woman  
15 full capacity for the purpose of personal consent to the abortion, or  
16 to give judicial consent to the abortion under subsection (4) of this  
17 section based upon a finding that the abortion is in the best interest  
18 of the pregnant woman;

19 (vii) That the pregnant woman is aware that any false statements  
20 made in the application are punishable by law; and

21 (viii) The signature of the pregnant woman. If necessary to serve  
22 the interest of justice, the family court shall refer the pregnant  
23 woman to the appropriate personnel for assistance in preparing the  
24 application.

25 (c) The name of the pregnant woman shall not be entered on any  
26 docket that is subject to public inspection. All persons shall be  
27 excluded from hearings under this section except the applicant and such  
28 other persons whose presence is specifically requested by the applicant  
29 or her guardian.

30 (d) At the hearing, the court shall hear evidence relating to the  
31 emotional development, maturity, intellect, and understanding of the  
32 pregnant woman, the fact and duration of her pregnancy, the nature,  
33 possible consequences, and alternatives to the abortion, and any other  
34 evidence that the court may find useful in determining whether the  
35 pregnant woman should be granted full capacity for the purpose of  
36 consenting to the abortion or whether the abortion is in the best  
37 interest of the pregnant woman. The court shall also notify the  
38 pregnant woman at the hearing that it must rule on her application

1 within three business days of the date of its filing and that, should  
2 the court fail to rule in favor of her application within the allotted  
3 time, she has the right to appeal to the superior court.

4 (7) Except in a medical emergency, no parent, guardian, or other  
5 person standing in loco parentis shall coerce a minor or incapacitated  
6 woman to undergo an abortion. Any minor or incapacitated woman who is  
7 threatened with such coercion may apply to the superior court for  
8 relief. The court shall provide the minor or incapacitated woman with  
9 counsel, give the matter expedited consideration, and grant such relief  
10 as may be necessary to prevent such coercion. Should a minor be denied  
11 the financial support of her parents by reason of her refusal to  
12 undergo abortion, she shall be considered emancipated for purposes of  
13 eligibility for assistance benefits.

14 (8) No filing fees shall be required of any woman availing herself  
15 of the procedures provided by this section. An expedited confidential  
16 appeal shall be available to any pregnant woman whom the court fails to  
17 grant an order authorizing an abortion within the time specified in  
18 this section. Any court to which an appeal is taken under this section  
19 shall give prompt and confidential attention thereto and shall rule  
20 thereon within five business days of the filing of the appeal. The  
21 supreme court may issue such rules as may further assure that the  
22 process provided in this section is conducted in such a manner as will  
23 ensure confidentiality and sufficient precedence over other pending  
24 matters to ensure promptness of disposition.

25 (9) Any person who performs an abortion upon a woman who is an  
26 unemancipated minor or incapacitated person to whom this section  
27 applies either with knowledge that she is a minor or incapacitated  
28 person to whom this section applies, or with reckless disregard or  
29 negligence as to whether she is a minor or incapacitated person to whom  
30 this section applies, and who intentionally, knowingly, or recklessly  
31 fails to conform to any requirement of this section is guilty of  
32 unprofessional conduct and his or her license for the practice of  
33 medicine and surgery shall be suspended for a period of at least three  
34 months. Failure to comply with the requirements of this section is  
35 prima facie evidence of failure to obtain informed consent and of  
36 interference with family relations in appropriate civil actions. The  
37 law shall not be construed to preclude the award of exemplary damages  
38 or damages for emotional distress even if unaccompanied by physical

1 complications in any appropriate civil action relevant to violations of  
2 this section. Nothing in this section shall be construed to limit the  
3 common law rights of parents.

4 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
5 preservation of the public peace, health, morals, or safety, or support  
6 of the state government and its existing public institutions, and takes  
7 effect immediately.

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