

FEB 11 1995
HUMAN RESOURCES

HOUSE FILE 287
BY LUKAN

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to parental consent prior to the performance of
2 an abortion on a minor, and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

HF 287

1 Section 1. Section 135L.1, subsections 3 and 5, Code 2005,
2 are amended by striking the subsections.

3 Sec. 2. Section 135L.3, Code 2005, is amended to read as
4 follows:

5 135L.3 ~~NOTIFICATION~~ CONSENT OF PARENT PRIOR TO THE
6 PERFORMANCE OF ABORTION ON A PREGNANT MINOR -- REQUIREMENTS
7 --CRIMINAL PENALTY.

8 1. A licensed physician shall not perform an abortion on a
9 pregnant minor ~~until-at-least-forty-eight-hours-prior~~
10 ~~notification-is-provided-to-a-parent~~ unless consent of a
11 parent of the pregnant minor is obtained prior to the
12 performance of the abortion.

13 ~~2.--The-licensed-physician-who-will-perform-the-abortion~~
14 ~~shall-provide-notification-in-person-or-by-mailing-the~~
15 ~~notification-by-restricted-certified-mail-to-a-parent-of-the~~
16 ~~pregnant-minor-at-the-usual-place-of-abode-of-the-parent.--For~~
17 ~~the-purpose-of-delivery-by-restricted-certified-mail,-the-time~~
18 ~~of-delivery-is-deemed-to-occur-at-twelve-o'clock-noon-on-the~~
19 ~~next-day-on-which-regular-mail-delivery-takes-place,~~
20 ~~subsequent-to-the-mailing.~~

21 3- 2. If the pregnant minor objects to the notification
22 obtaining of the consent of a parent prior to the performance
23 of an abortion on the pregnant minor, the pregnant minor may
24 petition the court to authorize waiver of the notification
25 consent requirement pursuant to this section in accordance
26 with the following procedures:

27 a. The court shall ensure that the pregnant minor is
28 provided with assistance in preparing and filing the petition
29 for waiver of notification consent and shall ensure that the
30 pregnant minor's identity remains confidential.

31 b. The pregnant minor may participate in the court
32 proceedings on the pregnant minor's own behalf. The court may
33 appoint a guardian ad litem for the pregnant minor and the
34 court shall appoint a guardian ad litem for the pregnant minor
35 if the pregnant minor is not accompanied by a responsible

1 adult ~~or-if-the-pregnant-minor-has-not-viewed-the-video-as~~
2 ~~provided-pursuant-to-section-135B-2.~~ In appointing a guardian
3 ad litem for the pregnant minor, the court shall consider a
4 person licensed to practice psychology pursuant to chapter
5 154B, a licensed social worker pursuant to chapter 154C, a
6 licensed marital and family therapist pursuant to chapter
7 154D, or a licensed mental health counselor pursuant to
8 chapter 154D to serve in the capacity of guardian ad litem.
9 The court shall advise the pregnant minor of the pregnant
10 minor's right to court-appointed legal counsel, and shall,
11 upon the pregnant minor's request, provide the pregnant minor
12 with court-appointed legal counsel, at no cost to the pregnant
13 minor.

14 c. The court proceedings shall be conducted in a manner
15 which protects the confidentiality of the pregnant minor and
16 notwithstanding section 232.147 or any other provision to the
17 contrary, all court documents pertaining to the proceedings
18 shall remain confidential and shall be sealed. Only the
19 pregnant minor, the pregnant minor's guardian ad litem, the
20 pregnant minor's legal counsel, and persons whose presence is
21 specifically requested by the pregnant minor, by the pregnant
22 minor's guardian ad litem, or by the pregnant minor's legal
23 counsel may attend the hearing on the petition.

24 d. Notwithstanding any law or rule to the contrary, the
25 court proceedings under this section shall be given precedence
26 over other pending matters to ensure that the court reaches a
27 decision expeditiously.

28 e. Upon petition and following an appropriate hearing, the
29 court shall waive the notification consent requirements if the
30 court determines either of the following:

31 (1) That the pregnant minor is mature and capable of
32 providing informed consent for the performance of an abortion.

33 (2) That the pregnant minor is not mature, or does not
34 claim to be mature, but that notification obtaining consent is
35 not in the best interest of the pregnant minor.

1 f. The court shall issue specific factual findings and
2 legal conclusions, in writing, to support the decision.

3 g. Upon conclusion of the hearing, the court shall
4 immediately issue a written order which shall be provided
5 immediately to the pregnant minor, the pregnant minor's
6 guardian ad litem, the pregnant minor's legal counsel, or to
7 any other person designated by the pregnant minor to receive
8 the order.

9 h. An expedited, confidential appeal shall be available to
10 a pregnant minor for whom the court denies a petition for
11 waiver of notification consent. An order granting the
12 pregnant minor's application for waiver of notification
13 consent is not subject to appeal. Access to the appellate
14 courts for the purpose of an appeal under this section shall
15 be provided to a pregnant minor twenty-four hours a day, seven
16 days a week.

17 i. A pregnant minor who chooses to utilize the waiver of
18 notification consent procedures under this section shall not
19 be required to pay a fee at any level of the proceedings.
20 Fees charged and court costs taxed in connection with a
21 proceeding under this section are waived.

22 j. If the court denies the petition for waiver of
23 notification consent and if the decision is not appealed or
24 all appeals are exhausted, the court shall advise the pregnant
25 minor that, upon the request of the pregnant minor, the court
26 will appoint a licensed marital and family therapist to assist
27 the pregnant minor in addressing any intrafamilial problems.
28 All costs of services provided by a court-appointed licensed
29 marital and family therapist shall be paid by the court
30 through the expenditure of funds appropriated to the judicial
31 branch.

32 k. Venue for proceedings under this section is in any
33 court in the state.

34 l. The supreme court shall prescribe rules to ensure that
35 the proceedings under this section are performed in an

1 expeditious and confidential manner. The rules shall require
 2 that the hearing on the petition shall be held and the court
 3 shall rule on the petition within forty-eight hours of the
 4 filing of the petition. If the court fails to hold the
 5 hearing and rule on the petition within forty-eight hours of
 6 the filing of the petition and an extension is not requested,
 7 the petition is deemed granted and waiver of the notification
 8 consent requirements is deemed authorized. The court shall
 9 immediately provide documentation to the pregnant minor and to
 10 the pregnant minor's legal counsel if the pregnant minor is
 11 represented by legal counsel, demonstrating that the petition
 12 is deemed granted and that waiver of the notification consent
 13 requirements is deemed authorized. Resolution of a petition
 14 for authorization of waiver of the notification consent
 15 requirement shall be completed within ten calendar days as
 16 calculated from the day after the filing of the petition to
 17 the day of issuance of any final decision on appeal.

18 m. The requirements of this section regarding notification
 19 the obtaining of consent of a parent of a pregnant minor prior
 20 to the performance of an abortion on a pregnant minor do not
 21 apply if any of the following applies:

22 (1) The abortion is authorized in writing by a parent
 23 entitled-to-notification from whom consent would otherwise be
 24 required.

25 ~~(2)--(a)--The-pregnant-minor-declares,-in-a-written~~
 26 ~~statement-submitted-to-the-attending-physician,-a-reason-for~~
 27 ~~not-notifying-a-parent-and-a-reason-for-notifying-a~~
 28 ~~grandparent-of-the-pregnant-minor-in-lieu-of-the-notification~~
 29 ~~of-a-parent.--Upon-receipt-of-the-written-statement-from-the~~
 30 ~~pregnant-minor,-the-attending-physician-shall-provide~~
 31 ~~notification-to-a-grandparent-of-the-pregnant-minor,-specified~~
 32 ~~by-the-pregnant-minor,-in-the-manner-in-which-notification-is~~
 33 ~~provided-to-a-parent:-~~

34 ~~(b)--The-notification-form-shall-be-in-duplicate-and-shall~~
 35 ~~include-both-of-the-following:-~~

1 ~~{i}~~--A-declaration-which-informs-the-grandparent-of-the
2 pregnant-minor-that-the-grandparent-of-the-pregnant-minor-may
3 be-subject-to-civil-action-if-the-grandparent-accepts
4 notification-

5 ~~{ii}~~--A-provision-that-the-grandparent-of-the-pregnant
6 minor-may-refuse-acceptance-of-notification-

7 {3} (2) The pregnant minor's attending physician
8 certifies in writing that a medical emergency exists which
9 necessitates the immediate performance of an abortion, and
10 places the written certification in the medical file of the
11 pregnant minor.

12 {4} (3) The pregnant minor declares that the pregnant
13 minor is a victim of child abuse pursuant to section 232.68,
14 the person responsible for the care of the child is a parent
15 of the child, and either the abuse has been reported pursuant
16 to the procedures prescribed in chapter 232, division III,
17 part 2, or a parent of the child is named in a report of
18 founded child abuse. The department of human services shall
19 maintain confidentiality under chapter 232 and shall not
20 release any information in response to a request for public
21 records, discovery procedures, subpoena, or any other means,
22 unless the release of information is expressly authorized by
23 the pregnant minor regarding the pregnant minor's pregnancy
24 and abortion, if the abortion is obtained. A person who
25 knowingly violates the confidentiality provisions of this
26 subparagraph is guilty of a serious misdemeanor.

27 {5} (4) The pregnant minor declares that the pregnant
28 minor is a victim of sexual abuse as defined in chapter 709
29 and has reported the sexual abuse to law enforcement.

30 n. A licensed physician who knowingly performs an abortion
31 in violation of this section is guilty of a serious
32 misdemeanor.

33 o. All records and files of a court proceeding maintained
34 under this section shall be destroyed by the clerk of court
35 when one year has elapsed from any of the following, as

1 applicable:

2 (1) The date that the court issues an order waiving the
3 notification consent requirements.

4 (2) The date after which the court denies the petition for
5 waiver of notification consent and the decision is not
6 appealed.

7 (3) The date after which the court denies the petition for
8 waiver of notification consent, the decision is appealed, and
9 all appeals are exhausted.

10 p. A person who knowingly violates the confidentiality
11 requirements of this section relating to court proceedings and
12 documents is guilty of a serious misdemeanor.

13 Sec. 3. Section 135L.6, Code 2005, is amended to read as
14 follows:

15 135L.6 FRAUDULENT PRACTICE.

16 ~~A person who does any of the following is guilty of a~~
17 ~~fraudulent practice in the fourth degree pursuant to section~~
18 ~~714.12:~~

19 ~~1.--Knowingly tenders a false original or copy of the~~
20 ~~signed and dated certification form described in section~~
21 ~~135B.27, to be retained by the licensed physician.~~

22 2.--Knowingly A person who knowingly tenders a false
23 original or copy of the notification consent document mailed
24 ~~to a parent or grandparent of the pregnant minor~~ under this
25 chapter, or a false original or copy of the order waiving
26 notification consent relative to the performance of an
27 abortion on a pregnant minor, is guilty of a fraudulent
28 practice in the fourth degree pursuant to section 714.12.

29 Sec. 4. Section 135L.7, subsection 1, Code 2005, is
30 amended to read as follows:

31 1. ~~With the exception of the civil liability which may~~
32 ~~apply to a grandparent of a pregnant minor who accepts~~
33 ~~notification under this chapter,~~ A person is immune from any
34 liability, civil or criminal, for any act, omission, or
35 decision made in connection with a good faith effort to comply

1 with the provisions of this chapter.

2 Sec. 5. Section 135L.8, Code 2005, is amended to read as
3 follows:

4 135L.8 ADOPTION OF RULES -- IMPLEMENTATION AND DOCUMENTS.

5 The Iowa department of public health shall adopt rules to
6 implement the notification consent procedures pursuant to this
7 chapter including but not limited to rules regarding the
8 documents necessary for notification obtaining consent of a
9 parent or-grandparent of a pregnant minor who is designated to
10 receive-notification provide consent under this chapter.

11 Sec. 6. Section 232.5, Code 2005, is amended to read as
12 follows:

13 232.5 ABORTION PERFORMED ON A MINOR -- WAIVER OF
14 NOTIFICATION CONSENT PROCEEDINGS.

15 The court shall have exclusive jurisdiction over the
16 proceedings for the granting of an order for waiver of the
17 notification consent requirements relating to the performance
18 of an abortion on a minor pursuant to section 135L.3.

19 Sec. 7. Section 135L.2, Code 2005, is repealed.

20 EXPLANATION

21 This bill amends Code chapter 135L to require consent of a
22 parent prior to the performance of an abortion on a minor.
23 Current law requires notification of a parent at least 48
24 hours prior to the performance of an abortion on a minor. The
25 bill provides that if a minor objects to the obtaining of
26 consent of a parent, the minor may petition the court to waive
27 the required obtaining of consent. The requirement of
28 obtaining consent does not apply if: the abortion is
29 authorized in writing by a parent from whom consent would
30 otherwise be required; the pregnant minor's physician provides
31 written certification that a medical emergency exists which
32 necessitates the immediate performance of an abortion; the
33 pregnant minor declares that she is a victim of child abuse;
34 or the pregnant minor declares that she is a victim of sexual
35 abuse.

1 The bill provides that a person who knowingly tenders a
2 false original or copy of the consent document or a false
3 original or copy of the order waiving the consent requirement
4 is guilty of a fraudulent practice in the fourth degree which
5 is a serious misdemeanor which carries a penalty of a fine of
6 at least \$250 but not to exceed \$1,500 and may in addition
7 include imprisonment not to exceed one year.

8 The bill also provides immunity from liability for a person
9 acting in good faith compliance with the Code chapter.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35