

HB 1517-FN – AS INTRODUCED

2008 SESSION

08-2583

01/04

HOUSE BILL **1517-FN**

AN ACT relative to parental consent for abortions.

SPONSORS: Rep. N. Elliott, Hills 19; Rep. Hogan, Hills 25; Rep. Garcia, Rock 4; Rep. Ulery, Hills 27; Rep. Dumaine, Rock 3

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits any physician from performing an abortion on any unemancipated minor less than 18 years of age without the consent of the minor and the consent of both parents except in certain circumstances. The consent requirement may be waived upon petition by the minor if the court finds the minor to be mature and well-informed enough to make her own decision or that the abortion would be in her best interests. The bill creates an exception for medical emergencies and establishes penalties for violations of the law.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

08-2583

01/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eight

AN ACT relative to parental consent for abortions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Parental Consent Prior to Abortion. Amend RSA 132 by inserting after section 28 the following new subdivision:

Parental Consent Prior to Abortion

132:29 Definitions. In this subdivision:

I. "Abortion" means the use of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with any intention 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.

II. "Emancipated minor" means any minor who is or has been married or has by

court order or otherwise been freed from the care, custody, and control of her parents.

III. "Minor" means any person under the age of 18.

132:30 Consent Required.

I. Notwithstanding any other law to the contrary, no person shall perform an abortion upon an unemancipated minor unless he or she first obtains both the consent of the minor and that of her parents, except as hereinafter provided. In deciding whether to grant such consent, a minor's parents shall consider only their child's best interests. If one of the minor's parents has died or is unavailable to the physician within a reasonable time and in a reasonable manner, consent of the remaining parent shall be sufficient. If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the minor's guardian or guardians shall be sufficient. If the minor's parents are divorced, consent of the parent having primary residential responsibility shall be sufficient.

II. If one or both of the minor's parents or guardians refuse to consent to the performance of an abortion, or if she elects not to seek the consent of one or both of her parents or guardians, a judge of the superior court shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines that the minor is mature and capable of giving informed consent to the proposed abortion or, if the judge determines that she is not mature, that the performance of an abortion upon her would be in her best interests. A minor may participate in proceedings in the superior court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel. Proceedings in the superior court under this section shall be confidential and shall be given such precedence over other pending matters that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the superior court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting his or her decision and shall order a record of the evidence to be maintained including his or her own findings and conclusions.

132:31 Medical Emergency Exception. Under RSA 132:30 no physician, provider, hospital, or clinic shall be held liable for damages for failure to obtain consent of a parent, legal guardian, or other person having custody or control of a minor for emergency examination and treatment, when delay in treatment will endanger the life or mental well-being of the patient.

132:32 Enjoining Performance of Abortion. The attorney general or any person whose consent is required either pursuant to RSA 132:30 or under common law, may petition the superior court for an order enjoining the performance of any abortion that may be performed contrary to the provisions of this subdivision.

132:33 Penalty. 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

fails to conform to any requirement of this subdivision is guilty of a misdemeanor.

132:34 Civil Damages Available. Failure to obtain consent pursuant to the requirements of this subdivision is prima facie evidence of interference with family relations in appropriate civil actions. Nothing in this subdivision shall be construed to limit the common law rights of parents.

132:35 Severability. If any provision, word, phrase, or clause of this subdivision or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or application of this subdivision which can be given effect without the invalid provision, word, phrase, clause, or application and to this end, the provisions, words, phrases, and clauses of this subdivision are declared to be severable.

2 Effective Date. This act shall take effect 60 days after its passage.

LBAO

08-2583

12/03/07