



SPONSOR: Rep. Shupe & Sen. Buckson
Reps. Collins, Yearick, Hilovsky; Sens. Hocker,
Lawson, Richardson

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 46

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PARENTAL CONSENT FOR MINORS
SEEKING AN ABORTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter VIII, Chapter 17, Title 24 of the Delaware Code by making deletions as shown
2 by strike through and insertions as shown by underline as follows:

3 Subchapter VIII. Parental ~~Notice of~~ Consent to Abortion Act

4 **§ 1780. Short title.**

5 This subchapter shall be known and may be cited as the “Parental ~~Notice of~~ Consent to Abortion Act.”

6 **§ 1782. Definitions.**

7 For purposes of this subchapter, the following definitions will apply.

8 (1) “Abortion” means the use of any instrument, medicine, drug or any other substance or device to terminate
9 the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth,
10 to preserve the life or health of the child after live birth, or to remove a dead fetus.

11 (2) “Coercion” means restraining or dominating the choice of a minor female by force, threat of force, or
12 deprivation of food and shelter.

13 (3) “Emancipated minor” means any minor female who is or has been married or has, by court order or
14 otherwise, been freed from the care, custody and control of her parents or any other legal guardian.

15 (4) “Licensed mental health professional” means a person licensed under the Division of Professional
16 Regulation of the State as a:

17 (a) Psychiatrist;

18 (b) Psychologist; or

(c) Licensed professional counselor of mental health.

(5) “Medical emergency” means that condition which, on the basis of the physician or other medically authorized person’s good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(6) “Minor” means a female person under the age of 16.

(7) “Neglect” means the minor has been subjected to neglect or the failure of the parents or guardians to provide proper care, support, or supervision, making parental consent inappropriate or harmful.

(8) “Abuse” means the minor has experienced physical, emotional, or sexual abuse by a parent, guardian, or other family member, creating a situation where obtaining parental consent would put the minor at risk of further harm.

§1783. Notice Parental Consent Required

No physician or other medically authorized person shall perform an abortion upon an unemancipated minor until complying with the following ~~notification~~ provisions for obtaining written parental consent:

(1) No physician or other medically authorized person shall perform an abortion upon an unemancipated minor unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has ~~given at least 24 hours actual notice to~~ received written consent from one or both parents (either custodial or noncustodial), or legal guardian, ~~a grandparent, a licensed mental health professional (who shall not be an employee or under contract to an abortion provider except employees or contractors of an acute care hospital) or to the legal guardian of the pregnant minor of the intention to perform the abortion. This consent must be obtained at least 24 hours before the abortion is performed.~~, or unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has received a written statement or oral communication from another physician or medically authorized person, hereinafter called the “referring physician or medically authorized person,” certifying that the referring physician or medically authorized person has given such notice. If the person contacted pursuant to this subsection is not the parent or guardian, the person so contacted must explain to the minor the options available to her include adoption, abortion and full-term pregnancy, and must agree that it is in the best interest of the minor that a waiver of the parental notice requirement be granted. Any licensed mental health professional so contacted shall certify that the professional has performed an assessment of the specific factors and circumstances of the minor subject to the evaluation including but not limited to the age and family circumstances of the minor and the long-term and short-term consequences to the minor of termination or continuation of the pregnancy.

48 a. No physician or other abortion provider shall charge a referral fee to a person authorized under this section
49 to ~~receive notice~~ give consent; nor shall a person authorized under this section to ~~receive notice~~ give consent charge a
50 referral fee to a physician or other abortion provider.

51 b. Nothing in this section shall affect the obligations of a person pursuant to other provisions of this Code to
52 report instances of child abuse to the appropriate government agencies.

53 (2) The written consent form shall include the following information:

54 (a) The name of the minor;

55 (b) The name and signature of the consenting parent or guardian;

56 (c) The name and signature of the attending physician;

57 (d) A statement indicating that the parent or guardian understands the nature of the procedure and consents
58 voluntarily.

59 ~~(2)-(3) In cases where obtaining parental consent is not possible or is deemed inappropriate due to relevant~~
60 ~~proof of abuse or neglect, a A~~ minor may petition the Family Court ("Court") of any county of this State for a waiver
61 of the ~~notice~~ parental consent requirement of this section pursuant to the procedures of § 1784 of this title. ~~A physician~~
62 ~~who has received a copy of a court order granting a waiver application under § 1784 of this title shall not, at any time,~~
63 ~~give notice of the minor's abortion to any person without the minor's written permission.~~

64 **§ 1784. Application for waiver of parental ~~notice~~ consent requirement; grounds; timeliness of decision;**
65 **notice of decision; appeals; costs.**

66 (a) The Court shall consider waiving the ~~notice~~ parental consent requirement of § 1783 of this title upon the
67 proper application of a minor. The application shall be in writing, signed by the minor, and verified by her oath or
68 affirmation before a person authorized to perform notarial acts. It shall designate:

69 (1) The minor's name and residence address;

70 (2) A mailing address where the Court's order may be sent and a telephone number where messages for the
71 minor may be left;

72 (3) That the minor is pregnant;

73 (4) That the minor desires to obtain an abortion;

74 (5) Each person for whom the ~~notice~~ parental consent requirement is sought to be waived; and

(6) The particular facts and circumstances which indicate that the minor is mature and well-informed enough to make the abortion decision on her own and/or that it is in the best interest of the minor that ~~notification~~ the parental consent requirement pursuant to § 1783 of this title be waived.

~~(b) The Court, by a judge, shall grant the written application for a waiver if the facts recited in the application establish that the minor is mature and well-informed enough to make the abortion decision on her own or that it is in the best interest of the minor that notification pursuant to § 1783 of this title be waived. The Court shall presume that married parents not separated and grandparents are complete confidants, such that, on application to waive the notice requirement as to either, grounds to waive the notice requirement as to one parent or grandparent shall constitute grounds to waive the notice requirement as to the spouse thereof.~~

(b) The Court shall, by a judge, grant the written application for a waiver of parental consent if it finds, by clear and convincing evidence, that:

(1) The minor is mature and well-informed enough to make the abortion decision independently; or

(2) Obtaining parental consent is not in the best interest of the minor, such as in cases of abuse, neglect, or coercion.

(c) If the Court fails to rule within 5 calendar days of the time of the filing of the written application, the application shall be deemed granted; in which case, on the sixth day, the Court shall issue an order stating that the application is deemed granted.

(d) The Court shall mail 3 copies of any order to the mailing address identified in the application on the day the order issues, shall attempt to notify the minor by telephone on the day the order issues, and if so requested, shall make copies of the order available at Court chambers for the minor.

(e) An expedited appeal to the Supreme Court shall be available to any minor whose petition is denied by a judge of the Family Court. Notice of intent to appeal shall be given within 2 days of the receipt of actual notice of the denial of the petition. The Supreme Court shall advise the minor that she has a right to court-appointed counsel and shall provide her with such counsel upon request, at no cost to the minor. The Supreme Court shall expedite proceedings to the extent necessary and appropriate under the circumstances. The Supreme Court shall notify the minor of its decision consistent with subsection (d) of this section.

(f) No court shall assess any fee or cost upon a minor for any proceeding under this section.

(g) Each Court shall provide by rule for the confidentiality of proceedings under this subchapter, but shall continue to initiate investigations into any allegations of past abuse where otherwise appropriate, without disclosing that an application under this subchapter was the source of the information prompting the investigation.

§ 1785. Short form of affidavit and application for waiver of parental ~~notice~~ consent requirement.

The following shall be sufficient form of affidavit and application for waiver of parental ~~notice~~ consent requirement under this subchapter:

IN THE FAMILY COURT OF THE STATE OF DELAWARE		
IN AND FOR (NAME OF COUNTY) COUNTY		
IN THE MATTER)	AFFIDAVIT AND
)	APPLICATION FOR
(NAME OF MINOR APPLICANT),)	WAIVER OF NOTICE <u>PARENTAL CONSENT</u>
)	OF
)	ABORTION
STATE OF DELAWARE)	
)	
_____ COUNTY, SS:)	

BE IT REMEMBERED that on this _____ day of _____, A.D. _____ before me, (name of person authorized to perform notarial acts), personally appeared (name of minor applicant/affiant) who, being by me duly sworn or affirmed, depose and say:

(1) That the minor applicant resides at (minor's address);

(2) That the Court may send its order to (mailing address designated by applicant minor) and leave telephone messages for the applicant minor at (phone number designated by applicant minor);

(3) That the minor applicant is pregnant;

(4) That the minor applicant desires to obtain an abortion;

(5) That the minor applicant desires that the Court waive the ~~notice~~ parental consent requirement of § 1783 of Title 24;

(6) That the minor applicant believes that she is mature and well-informed enough to make the abortion decision on her own and/or it would be in her best interest that a waiver of parental consent ~~notice~~ be granted because (state reasons why mature and well-informed enough and/or waiver of parental consent ~~notice~~ is in best interest based upon the applicant's age and family circumstances and the long-term and short-term consequences to the applicant of termination or continuation of the pregnancy).

WHEREFORE, this minor applicant intends to submit this affidavit and application for waiver of parental consent ~~for notice~~ of abortion to the Family Court, and pray that an order be issued waiving the ~~notification~~ parental consent requirement of § 1783 of Title 24 as to the following persons: (identify each such person).

Minor applicant/affiant

SWORN TO or affirmed and subscribed before me by the minor applicant/affiant this _____ day of _____, A.D. _____.

(Notary)

§ 1789A. ~~Notice~~ Parental Consent and avoidance of liability.

In any prosecution pursuant to § 1789 of this title, the State shall prove beyond a reasonable doubt that the physician (or other medically authorized person) who performed the abortion did not have a good faith belief on that physician's part that parental consent had been obtained. ~~actual notice was given by such physician (or other medically authorized person), that physician's agent, or the referring physician or another medically authorized person to a person listed in § 1783(1) of this title as qualified to receive notice.~~ In any civil case, the plaintiff must prove the absence of such a good faith belief by clear and convincing evidence.

§ 1789B. Civil damages available.

Failure to ~~give notice~~ obtain parental consent pursuant to the requirements of this subchapter is prima facie evidence of interference with family relations in appropriate civil actions. The law of this State shall not be construed to preclude the award of punitive damages in any civil action relevant to violations of this subchapter. Nothing in this subchapter shall be construed to limit the common law rights of parents.

Section 2. Effective Date

This Act shall take effect 30 days after its enactment into law.

SYNOPSIS

Like House Bill 46, this Act ensures that no physician or medically authorized person shall perform an abortion upon a child under the age of 16 without having obtained parental consent, except in cases of medical emergency or if the Family Court adjudicates that the minor is mature and well-informed enough to make the decision independently, or obtaining parental consent is not in the best interest of the minor, such as in cases of abuse, neglect, or coercion.

This Act differs from House Bill 46 by removing additional references to the former notice requirement in Chapter 17, Subchapter VIII, of Title 24, and by clarifying that a legal guardian may grant the consent required by this Act.