

1 H.57

2 Representative Bancroft of Westford moves that the bill be amended as
3 follows:

4 First: In Sec. 2, 18 V.S.A. chapter 223, in section 9494 (interference with
5 reproductive choice prohibited), in subsection (a), before “public entity” by
6 striking out the word “A” and inserting in lieu thereof the following:

7 Except as provided in chapters 115 and 232 of this title, a

8 Second: In Sec. 2, 18 V.S.A. chapter 223, in section 9497 (abortion;
9 restricting access prohibited) before “public entity shall not” by striking out the
10 word “A” and inserting in lieu thereof the following:

11 “Except as provided in chapters 115 and 232 of this title, a”

12 Third: By striking out Sec. 3 (effective date) in its entirety and inserting in
13 lieu thereof the following:

14 Sec. 3. 18 V.S.A. chapter 115 is added to read:

15 CHAPTER 115. PARENTAL CONSENT TO A MINOR’S ABORTION

16 § 5295. DEFINITIONS

17 As used in this chapter:

18 (1) “Abortion” means the use of any means to terminate the pregnancy
19 of an individual known to be pregnant with knowledge that the termination
20 with those means will, with reasonable likelihood, cause the death of the fetus.

1 (2) “Fetus” means any individual human organism from fertilization
2 until birth.

3 (3) “Health care provider” means any health care professional who is
4 authorized to perform an abortion and is proposing to provide an abortion.

5 § 5296. CONSENT

6 No abortion shall be performed upon an unemancipated minor or upon a
7 minor for whom a guardian has been appointed without the written consent of
8 least one parent of an unemancipated minor or the guardian of the minor.

9 § 5297. LIMITATIONS

10 Consent required under section 5296 of this title shall not be required if:

11 (1) the attending health care provider proposing to provide the abortion
12 certifies in the minor’s medical record that the abortion is necessary to prevent
13 the minor’s death or serious physical injury to the minor, and there is
14 insufficient time to provide the required consent to a parent or guardian; or

15 (2) the parent or guardian entitled to consent certifies in writing, with
16 proof of identification, that he or she has been notified of the minor’s intent to
17 have an abortion and consents to the procedure; or

18 (3) a court authorizes the health care provider to proceed with the
19 abortion pursuant to the following procedure:

20 (A) A minor, with the assistance of her health care provider and
21 without the consent of a parent or guardian, may petition any Probate Division

1 of the Superior Court for a waiver of the parental consent requirement. The
2 petition shall be in simple form prescribed by rules adopted by the Vermont
3 Supreme Court, and shall include a statement that the petitioner is pregnant,
4 that consent has not been waived, and that the minor has not petitioned any
5 other court for a waiver to the consent requirement relating to this pregnancy.

6 (B) The Probate Division of the Superior Court shall appoint an
7 attorney and an appropriately trained guardian ad litem for the minor.

8 (C) The Probate Division of the Superior Court shall hold an ex parte
9 hearing on a petition filed under this subdivision (3), which may be in a setting
10 other than a traditional courtroom. The hearing shall be closed to the public
11 and the rules of evidence shall not apply. Witnesses shall be sworn and the
12 testimony shall be audio recorded. A copy of the audio recording shall be
13 made available to the minor without cost.

14 (D) Probate Division of the Superior Court proceedings under this
15 subdivision (3) shall be given precedence over other pending matters to the
16 extent necessary to ensure that the court reaches a decision promptly and in the
17 best interests of the minor.

18 (E) The Probate Division of the Superior Court shall hear the matter
19 and issue a written entry order within three business days after the petition is
20 filed, except that the three-business-day limitation may be extended at the
21 request of the minor. A certified copy of the court's written entry order shall

1 be sent to the minor’s health care provider. If the court fails to rule within
2 three business days of receiving the petition or fails to rule by the expiration of
3 any extension, the petition is granted. A certified copy of the automatic waiver
4 of parental consent shall be delivered forthwith to the minor’s health care
5 provider.

6 (F) The Probate Division of the Superior Court shall issue an order
7 authorizing the minor to consent to an abortion without the consent of a parent
8 or guardian if the court finds, by clear and convincing evidence, any of the
9 following:

10 (i) upon an evaluation of relevant factors, including a minor’s age,
11 intelligence, reasoning ability, and emotional state, the minor is sufficiently
12 mature to decide whether to terminate her pregnancy and provide for her own
13 post-abortion care, and understands the nature, risks, and consequences of the
14 procedure to be performed;

15 (ii) parental consent would place the minor at substantial risk of
16 being physically or emotionally harmed by a parent or guardian;

17 (iii) parental consent would cause irreparable harm to the minor’s
18 relationship with her parent or guardian; or

19 (iv) parental consent is not in the best interests of the minor.

20 (G) All records of proceedings that take place under this section shall
21 remain confidential and be placed under seal. Any information that is sent to

1 the minor's health care provider in accordance with this section shall become
2 part of the minor's confidential medical record.

3 (H) For purposes of this section, any Probate judge who grants a
4 waiver of consent based upon a decision that the pregnancy is a result of abuse,
5 neglect, or the commission of a crime against the minor, or any guardian ad
6 litem who has a suspicion that the pregnancy is a result of abuse, neglect, or
7 the commission of a crime against the minor, shall report or cause a report to
8 be made within 24 hours after the decision, in accordance with the provisions
9 of 33 V.S.A. §§ 4913 and 4914.

10 § 5298. APPEAL

11 An expedited, confidential appeal to the presiding judge of the Family
12 Division of the Superior Court in the county in which the Probate Division of
13 the Superior Court action occurred, pursuant to section 5296 of this title, shall
14 be available to any minor for whom the Probate Division of the Superior Court
15 denies a waiver of consent.

16 (1) Notice of an appeal must be filed in family court within 11 days of
17 the Probate Division of the Superior Court decision.

18 (2) Within three business days of filing the notice of appeal, the
19 presiding judge of the Family Division of the Superior Court shall conduct a
20 hearing de novo and issue a decision, including findings of fact and

1 conclusions of law, on this matter. The three-business-day limitation may be
2 extended at the request of the minor.

3 (3) The presiding judge of the Family Division of the Superior Court
4 shall hold an ex parte hearing on a notice of appeal filed under this section,
5 which may be in a setting other than a traditional courtroom. The hearing shall
6 be informal and closed to the public. Strict rules of evidence shall not apply.
7 Witnesses shall be sworn and the testimony shall be audio recorded. A copy of
8 the audio recording shall be made available to the minor without cost.

9 (4) Family court proceedings under this section shall be given
10 precedence over other pending matters to the extent necessary to ensure that
11 the court reaches a decision promptly and in the best interests of the minor.

12 (5) A certified copy of the Family Division of the Superior Court's
13 written decision shall be sent to the minor's health care provider. If the Family
14 Division of the Superior Court fails to rule within three business days of
15 receiving the notice of appeal or fails to rule by the expiration of any
16 extension, the request for a waiver of consent is granted. A certified copy of
17 the automatic waiver of parental consent shall be delivered forthwith to the
18 minor's health care provider.

19 (6) The presiding judge of the Family Division of the Superior Court
20 shall issue an order authorizing the minor to consent to an abortion without the
21 consent of a parent or guardian if the court finds, by clear and convincing

1 evidence, that any of the requirements of subdivision 5297(3)(F) of this
2 chapter have been met.

3 (7) All records of proceedings that take place under this section shall
4 remain confidential and be placed under seal. Any information that is sent to
5 the minor's health care provider in accordance with this section shall become
6 part of the minor's confidential medical record.

7 (8) For purposes of this section, any presiding judge of a Family
8 Division of the Superior Court who grants a waiver of consent based upon a
9 finding that the pregnancy is a result of abuse, neglect, or the commission of a
10 crime against the minor, or any guardian ad litem who has a suspicion that the
11 pregnancy is a result of abuse, neglect, or the commission of a crime against
12 the minor, shall report or cause a report to be made within 24 hours after the
13 finding has been made, in accordance with the provisions of 33 V.S.A. §§ 4913
14 and 4914.

15 § 5299. LIMITATIONS ON APPEAL

16 An order authorizing an abortion without consent shall not be subject to
17 appeal.

18 § 5299a. RECUSAL; FEES AND COSTS

19 (a) In the event of a judge's recusal, a substitute judge shall be appointed
20 immediately, and the hearing and decision shall be concluded within two
21 business days thereafter.

1 (b) No filing fees or court costs shall be required of the minor in either the
2 Probate Division of the Superior Court or the Family Division of the Superior
3 Court.

4 Sec. 4. 4 V.S.A. § 35 is amended to read:

5 § 35. JURISDICTION; PROBATE DIVISION

6 The Probate Division shall have jurisdiction of:

7 * * *

8 (24) emancipation of minors proceedings filed pursuant to 12 V.S.A.
9 chapter 217;

10 (25) grandparent visitation proceedings under 15 V.S.A. chapter 18; ~~and~~

11 (26) waiver of parental consent prior to performing an abortion on an
12 unemancipated minor; and

13 (27) other matters as provided by law.

14 Sec. 5. 4 V.S.A. § 311a is amended to read:

15 § 311a. VENUE GENERALLY

16 For proceedings authorized to the Probate Division of Superior Court,
17 venue shall lie as provided in Title 14A for the administration of trusts, and
18 otherwise in a probate district as follows:

19 * * *

20 (31) Waiver of parental consent prior to performing an abortion on an
21 unemancipated minor: in the district or county where the minor petitions the

1 Probate Division of the Superior Court for a waiver of the parental consent
2 requirement.

3 Sec. 6. 4 V.S.A. § 33 is amended to read:

4 § 33. JURISDICTION; FAMILY DIVISION

5 (a) Notwithstanding any other provision of law to the contrary, the Family
6 Division shall have exclusive jurisdiction to hear and dispose of the following
7 proceedings filed or pending on or after October 1, 1990:

8 * * *

9 (c) The Family Division of the Superior Court shall have appellate
10 jurisdiction to hear and dispose of an appeal from the Probate Division of the
11 Superior Court regarding a waiver of parental consent prior to performing an
12 abortion on an unemancipated minor.

13 Sec. 7. 18 V.S.A. chapter 232 is added to read:

14 CHAPTER 232. PREGNANCY INFORMATION AND COUNSELING FOR
15 MINORS

16 § 9751. PROVISION OF INFORMATION AND COUNSELING

17 Prior to providing services related to pregnancy, a health care provider, as
18 defined in subdivision 9432(9) of this title, or a mental health professional, as
19 defined in subdivision 7101(13) of this title, shall, to the extent already
20 required by the providers' code of professional conduct, provide information

1 and counseling in a manner and language that will be understood by the minor,

2 including:

3 (1) An explanation that the information is being given objectively, and
4 is not intended to coerce, persuade, or induce the minor to make a particular
5 decision.

6 (2) An explanation that the minor may withdraw or reconsider a
7 decision related to her pregnancy, within certain limits, which shall also be
8 explained to her.

9 (3) An explanation to the minor of the options available for managing
10 pregnancy decisions and follow-up care.

11 (4) An explanation that public and private agencies are available to
12 assist the minor with services related to her pregnancy, and that a list of these
13 agencies and the services available from each will be provided if the minor
14 requests.

15 (5) A discussion of the possibility of involving the minor's parents,
16 guardian, or other adult family members in the minor's reproductive health
17 care decision making.

18 (6) An adequate opportunity for the minor to ask questions and receive
19 answers concerning reproductive health care. The health care provider and
20 mental health professional shall indicate where the minor can receive the
21 information requested if he or she is unable to provide such information.

1 § 9752. MEDICAL EMERGENCY EXCEPTION

2 Information and counseling required under section 9751 of this title shall
3 not be required if a health care provider determines that a medical emergency
4 exists that complicates the pregnancy or the health, safety, or well-being of the
5 minor to the extent that an immediate abortion is necessary.

6 Sec. 8. EFFECTIVE DATE

7 This act shall take effect on passage.