

H.57

2 Representative Donahue of Northfield moves that the bill be amended as
3 follows:

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

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:

CHAPTER 115. PARENTAL NOTIFICATION OF ABORTION

16 § 5295. DEFINITIONS

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. NOTIFICATION

6 No abortion shall be performed upon an unemancipated minor or upon a
7 minor for whom a guardian has been appointed until 48 hours after written
8 notification of the pending abortion has been delivered to at least one parent of
9 the unemancipated minor or to the guardian of the minor. The notification
10 shall be delivered at the parent’s or guardian’s usual place of abode, if
11 possible; otherwise, at any other appropriate place, and shall be:

12 (1) personally delivered to the parent or guardian by the attending health
13 care provider proposing to provide the abortion or an agent of the health care
14 provider; or

15 (2) sent to the parent or guardian by certified mail, return receipt
16 requested, delivery restricted to the addressee. Time of delivery shall be
17 deemed to occur at the time the return receipt is signed by the recipient.

18 § 5297. LIMITATIONS

19 Notification required under section 5296 of this title shall not be required if:
20 (1) the attending health care provider proposing to provide the abortion
21 certifies in the minor’s medical record that the abortion is necessary to prevent

1 the minor's death or serious physical injury to the minor, and there is
2 insufficient time to provide the required notification to a parent or guardian; or
3 (2) the parent or guardian entitled to notification certifies in writing,
4 with proof of identification, that he or she has been notified of the minor's
5 intent to have an abortion; or
6 (3) a court authorizes the health care provider to proceed with the
7 abortion pursuant to the following procedure:
8 (A) A minor, with the assistance of her health care provider and
9 without the notification of a parent or guardian, may petition any Probate
10 Division of the Superior Court for a waiver of the parental notification
11 requirement. The petition shall be in simple form prescribed by rules adopted
12 by the Vermont Supreme Court, and shall include a statement that the
13 petitioner is pregnant, that notification has not been waived, and that the minor
14 has not petitioned any other court for a waiver to the notification requirement
15 relating to this pregnancy.
16 (B) The Probate Division of the Superior Court shall appoint an
17 attorney and an appropriately trained guardian ad litem for the minor.
18 (C) The Probate Division of the Superior Court shall hold an ex parte
19 hearing on a petition filed under this subdivision (3), which may be in a setting
20 other than a traditional courtroom. The hearing shall be closed to the public
21 and the rules of evidence shall not apply. Witnesses shall be sworn and the

1 testimony shall be audio recorded. A copy of the audio recording shall be
2 made available to the minor without cost.

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

7 (E) The Probate Division of the Superior Court shall hear the matter
8 and issue a written entry order within three business days after the petition is
9 filed, except that the three-business-day limitation may be extended at the
10 request of the minor. A certified copy of the court's written entry order shall
11 be sent to the minor's health care provider. If the court fails to rule within
12 three business days of receiving the petition or fails to rule by the expiration of
13 any extension, the petition is granted. A certified copy of the automatic waiver
14 of parental notification shall be delivered forthwith to the minor's health care
15 provider.

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

20 (i) upon an evaluation of relevant factors, including a minor's age,
21 intelligence, reasoning ability, and emotional state, the minor is sufficiently

1 mature to decide whether to terminate her pregnancy and provide for her own
2 post-abortion care, and understands the nature, risks, and consequences of the
3 procedure to be performed;

4 (ii) parental notification would place the minor at substantial risk
5 of being physically or emotionally harmed by a parent or guardian;
6 (iii) parental notification would cause irreparable harm to the
7 minor's relationship with her parent or guardian; or
8 (iv) parental notification is not in the best interests of the minor.

9 (G) All records of proceedings that take place under this section shall
10 remain confidential and be placed under seal. Any information that is sent to
11 the minor's health care provider in accordance with this section shall become
12 part of the minor's confidential medical record.

13 (H) For purposes of this section, any Probate judge who grants a
14 waiver of notification based upon a decision that the pregnancy is a result of
15 abuse, neglect, or the commission of a crime against the minor, or any
16 guardian ad litem who has a suspicion that the pregnancy is a result of abuse,
17 neglect, or the commission of a crime against the minor, shall report or cause a
18 report to be made within 24 hours after the decision, in accordance with the
19 provisions of 33 V.S.A. §§ 4913 and 4914.

20 § 5298. APPEAL

1 An expedited, confidential appeal to the presiding judge of the Family
2 Division of the Superior Court in the county in which the Probate Division of
3 the Superior Court action occurred, pursuant to section 5296 of this title, shall
4 be available to any minor for whom the Probate Division of the Superior Court
5 denies a waiver of notification.

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

8 (2) Within three business days of filing the notice of appeal, the
9 presiding judge of the Family Division of the Superior Court shall conduct a
10 hearing de novo and issue a decision, including findings of fact and
11 conclusions of law, on this matter. The three-business-day limitation may be
12 extended at the request of the minor.

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

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

1 (5) A certified copy of the Family Division of the Superior Court's
2 written decision shall be sent to the minor's health care provider. If the Family
3 Division of the Superior Court fails to rule within three business days of
4 receiving the notice of appeal or fails to rule by the expiration of any
5 extension, the request for a waiver of notification is granted. A certified copy
6 of the automatic waiver of parental notification shall be delivered forthwith to
7 the minor's health care provider.

8 (6) The presiding judge of the Family Division of the Superior Court
9 shall issue an order authorizing the minor to consent to an abortion without the
10 notification of a parent or guardian if the court finds, by clear and convincing
11 evidence, that any of the requirements of subdivision 5297(3)(F) of this
12 chapter have been met.

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

17 (8) For purposes of this section, any presiding judge of a Family
18 Division of the Superior Court who grants a waiver of notification based upon
19 a finding that the pregnancy is a result of abuse, neglect, or the commission of
20 a crime against the minor, or any guardian ad litem who has a suspicion that
21 the pregnancy is a result of abuse, neglect, or the commission of a crime

1 against the minor, shall report or cause a report to be made within 24 hours
2 after the finding has been made, in accordance with the provisions of 33
3 V.S.A. §§ 4913 and 4914.

4 § 5299. LIMITATIONS ON APPEAL

5 An order authorizing an abortion without parental notification shall not be
6 subject to appeal.

7 § 5299a. RECUSAL; FEES AND COSTS

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

11 (b) No filing fees or court costs shall be required of the minor in either the
12 Probate Division of the Superior Court or the Family Division of the Superior
13 Court.

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

15 § 35. JURISDICTION; PROBATE DIVISION

16 The Probate Division shall have jurisdiction of:

17 * * *

18 (24) emancipation of minors proceedings filed pursuant to 12 V.S.A.

19 chapter 217;

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

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

3 (27) other matters as provided by law.

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

5 § 311a. VENUE GENERALLY

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

9 * * *

(31) Waiver of parental notification prior to performing an abortion on
an unemancipated minor: in the district or county where the minor petitions
the Probate Division of the Superior Court for a waiver of the parental
notification requirement.

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

15 § 33. JURISDICTION; FAMILY DIVISION

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

19 * * *

20 (c) The Family Division of the Superior Court shall have appellate
21 jurisdiction to hear and dispose of an appeal from the Probate Division of the

1 Superior Court regarding a waiver of parental notification prior to performing
2 an abortion on an unemancipated minor.

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

CHAPTER 232. PREGNANCY INFORMATION AND COUNSELING FOR

MINORS

§ 9751. PROVISION OF INFORMATION AND COUNSELING

Prior to providing services related to pregnancy, a health care provider, as defined in subdivision 9432(9) of this title, or a mental health professional, as defined in subdivision 7101(13) of this title, shall, to the extent already required by the providers' code of professional conduct, provide information and counseling in a manner and language that will be understood by the minor, including:

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

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

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

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

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

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

12 § 9752. MEDICAL EMERGENCY EXCEPTION

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

17 Sec. 8. EFFECTIVE DATE

18 This act shall take effect on passage.