

1 H.564

2 Introduced by Representatives Strong of Albany, Achev of Middletown

3 Springs, Hang of Berkshire, Higley of Lowell, Lefebvre of

4 Orange, Martel of Waterford, Morrissey of Bennington,

5 Peterson of Clarendon, Rosenquist of Georgia, and Williams of

6 Granby

7 Referred to Committee on

8 Date:

9 Subject: Health; reproductive rights; parental notification

10 Statement of purpose of bill as introduced: This bill proposes to require

11 notification of a parent or guardian prior to performing an abortion on an

12 unemancipated minor or upon a minor for whom a guardian has been

13 appointed. The bill also creates a judicial procedure for the minor to waive the

14 notification requirements and an appeal process. The bill proposes to require

15 health care providers to supply pregnancy information and counseling to the

16 minor.

17 An act relating to requiring notification of a parent or guardian prior to

18 performing an abortion on a minor

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 18 V.S.A. § 9496 is amended to read:

3 § 9496. DEFINITIONS

4 As used in this ~~subchapter~~ chapter:

5 \* \* \*

6 (3) “Abortion” means the use of any means intended to artificially  
7 induce the termination of an individual’s pregnancy except for the purpose of  
8 producing a live birth.

9 Sec. 2. 18 V.S.A. chapter 223, subchapter 3 is added to read:

10 Subchapter 3. Parental Notification of Abortion and Pregnancy Counseling for

11 Minors

12 § 9499. PARENTAL NOTIFICATION OF ABORTION

13 (a) Notification. Notwithstanding any provision of this chapter to the  
14 contrary, no abortion shall be performed upon an unemancipated minor or  
15 upon a minor for whom a guardian has been appointed pursuant to 14 V.S.A.  
16 § 2628 until 48 hours after written notification of the pending abortion has  
17 been delivered to at least one parent of the unemancipated minor or to the  
18 guardian of the minor. The notification shall be delivered at the parent’s or  
19 guardian’s usual place of abode, if possible, otherwise, at any other appropriate  
20 place, and shall be:

1           (1) Personally delivered to the parent or guardian by the attending health  
2       care provider proposing to provide the abortion or an agent of the health care  
3       provider.

4           (2) Sent to the parent or guardian by certified mail, return receipt  
5       requested, delivery restricted to the addressee. Time of delivery shall be  
6       deemed to occur at the time the return receipt is signed by the recipient.

7           (b) Limitations. Notification required under this section shall not be  
8       required if:

9           (1) The attending health care provider proposing to provide the abortion  
10      certifies in the minor's medical record that the abortion is necessary to prevent  
11      the minor's death or serious physical injury to the minor, and there is  
12      insufficient time to provide the required notification to a parent or guardian.

13           (2) The parent or guardian entitled to notification certifies in writing,  
14      with proof of identification, that the parent or guardian has been notified of the  
15      minor's intent to have an abortion.

16           (3) A court authorizes the health care provider to proceed with the  
17      abortion pursuant to the following procedure:

18           (A) A minor, with the assistance of the minor's health care provider  
19      and without the notification of a parent or guardian, may petition any Probate  
20      Division of the Superior Court for a waiver of the parental notification  
21      requirement. The petition shall be in simple form prescribed by rules adopted

1       by the Vermont Supreme Court and shall include a statement that the petitioner  
2       is pregnant, that the notification has not been waived, and that the minor has  
3       not petitioned any other court for a waiver to the notification requirement  
4       relating to this pregnancy.

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

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

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

16           (E) The Probate Division shall hear the matter and issue a written  
17      entry order within three business days after the petition is filed, except that the  
18      three-business-day limitation may be extended at the request of the minor. A  
19      certified copy of the court's written entry order shall be sent to the minor's  
20      health care provider. If the court fails to rule within three business days of  
21      receiving the petition or fails to rule by the expiration of any extension, the

1       petition is granted. A certified copy of the automatic waiver of parental  
2       notification shall be delivered forthwith to the minor's health care provider.

3           (F) The Probate Division shall issue an order authorizing the minor to  
4       consent to an abortion without the notification of a parent or guardian if the  
5       court finds, by clear and convincing evidence, any of the following:

6              (i) upon an evaluation of relevant factors, including a minor's age,  
7       intelligence, reasoning ability, and emotional state, the minor is sufficiently  
8       mature to decide whether to terminate the pregnancy and provide for post-  
9       abortion care, and understands the nature, risks, and consequences of the  
10      procedure to be performed;

11              (ii) parental notification would place the minor at substantial risk  
12      of being physically or emotionally harmed by a parent or guardian;  
13              (iii) parental notification would cause irreparable harm to the  
14      minor's relationship with a parent or guardian; or  
15              (iv) parental notification is not in the best interests of the minor.

16           (G) All records of proceedings that take place under this subsection  
17      (b) shall remain confidential and be placed under seal. Any information that is  
18      sent to the minor's health care provider in accordance with this subsection (b)  
19      shall become part of the minor's confidential medical record.

20           (H) For purposes of this subsection (b), any Probate judge who grants  
21      a waiver of notification based upon a decision that the pregnancy is a result of

1       abuse, neglect, or the commission of a crime against the minor, or any  
2       guardian ad litem who has a suspicion that the pregnancy is a result of abuse,  
3       neglect, or the commission of a crime against the minor, shall report or cause a  
4       report to be made within 24 hours after the decision pursuant to the provisions  
5       of 33 V.S.A. §§ 4913 and 4914.

6           (c) Appeal. An expedited, confidential appeal to the presiding judge of the  
7       Family Division of the Superior Court in the county in which the Probate  
8       Division action occurred pursuant to subsection (c) of this section shall be  
9       available to any minor for whom the Probate Division denies a waiver of  
10      notification.

11           (1) Notice of an appeal must be filed in the Family Division within  
12      11 days following the Probate Division decision.

13           (2) Within three days after filing the notice of appeal, the presiding  
14      judge of the Family Division shall conduct a hearing de novo and issue a  
15      decision, including findings of fact and conclusions of law, on this matter. The  
16      three-day limitation may be extended at the request of the minor.

17           (3) The presiding judge of the Family Division shall hold an ex parte  
18      hearing on a notice of appeal filed under this section, which may be in a setting  
19      other than a traditional courtroom. The hearing shall be informal and closed to  
20      the public. Strict rules of evidence shall not apply. Witnesses shall be sworn,

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

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

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

12           (6) The presiding judge of the Family Division shall issue an order  
13      authorizing the minor to consent to an abortion without the notification of a  
14      parent or guardian if the court finds, by clear and convincing evidence, that any  
15      of the requirements of subdivision (3)(F) of subsection (b) have been met.

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

20           (8) For purposes of this subsection, any presiding judge of a Family  
21      Division who grants a waiver of notification based upon a finding that the

1       pregnancy is a result of abuse, neglect, or the commission of a crime against  
2       the minor, or any guardian ad litem who has a suspicion that the pregnancy is a  
3       result of abuse, neglect, or the commission of a crime against the minor, shall  
4       report or cause a report to be made within 24 hours after the finding has been  
5       made pursuant to the provisions of 33 V.S.A. §§ 4913 and 4914.

6           (d) Limitations on appeal. An order authorizing an abortion without  
7       parental notification shall not be subject to appeal.

8           (e) Recusal; fees and costs. In the event of a judge's recusal, a substitute  
9       judge shall be appointed immediately, and the hearing and decision shall be  
10      concluded within two business days thereafter. No filing fees or court costs  
11      shall be required of the minor in either the Probate Division or the Family  
12      Division.

13      § 9499a. PROVISION OF INFORMATION AND COUNSELING

14      Prior to providing services related to pregnancy, a health care provider as  
15      defined in subdivision 9496(1) of this title or a mental health professional as  
16      defined in subdivision 7101(13) of this title shall, to the extent already required  
17      by the provider's code of professional conduct, provide information and  
18      counseling in a manner and language that will be understood by the minor,  
19      including:

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

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

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

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

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

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

1       § 9499b. MEDICAL EMERGENCY EXCEPTION

2       Information and counseling required under section 9499a 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. 3. 4 V.S.A. § 35 is amended to read:

7       § 35. JURISDICTION; PROBATE DIVISION

8       The Probate Division shall have jurisdiction of:

9                          \* \* \*

10                         (26) other matters as provided by law; and

11                         (27) concurrent with the Family Division, special immigration judicial  
12                         determinations regarding the custody and care of children within the meaning  
13                         of the federal Immigration and Nationality Act (8 U.S.C. § 1101(a)(27)(J) and  
14                         8 C.F.R. § 204.11) issued pursuant to 14 V.S.A. chapter 111, subchapter 14;  
15                         and

16                         (28) waiver of parental notification prior to performing an abortion on  
17                         an unemancipated minor.

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

19       § 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:

4 \* \* \*

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

8 Sec. 5. 4 V.S.A. § 33 is amended to read:

## 9        § 33. JURISDICTION; FAMILY DIVISION

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

13 \* \* \*

14           (c) The Family Division shall have appellate jurisdiction to hear and  
15           dispose of an appeal from the Probate Division of the Superior Court regarding  
16           a waiver of parental notification prior to performing an abortion on an  
17           unemancipated minor.

## 18 Sec. 6. EFFECTIVE DATE

19 This act shall take effect on July 1, 2022.