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H.564

Introduced by Representatives Strong of Albany, Achey of Middletown  
Springs, Hango of Berkshire, Higley of Lowell, Lefebvre of  
Orange, Martel of Waterford, Morrissey of Bennington,  
Peterson of Clarendon, Rosenquist of Georgia, and Williams of  
Granby

Referred to Committee on

Date:

Subject: Health; reproductive rights; parental notification

Statement of purpose of bill as introduced: This bill proposes to require  
notification of a parent or guardian prior to performing an abortion on an  
unemancipated minor or upon a minor for whom a guardian has been  
appointed. The bill also creates a judicial procedure for the minor to waive the  
notification requirements and an appeal process. The bill proposes to require  
health care providers to supply pregnancy information and counseling to the  
minor.

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

1 For proceedings authorized to the Probate Division of Superior Court,  
2 venue shall lie as provided in Title 14A for the administration of trusts, and  
3 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.