

# HB5229



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5229

Introduced 1/31/2022, by Rep. Adam Niemerg

### SYNOPSIS AS INTRODUCED:

New Act  
20 ILCS 4111/Act rep.

Creates the Parental Notice of Abortion Act of 2022, with provisions similar to those of the Parental Notice of Abortion Act of 1995. Repeals the Youth Health and Safety Act. Effective upon becoming law or on the date Public Act 102-685 takes effect, whichever is later.

LRB102 23415 LNS 32584 b

A BILL FOR

1 AN ACT concerning parental notice of abortion.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Parental Notice of Abortion Act of 2022.

6 Section 5. Legislative findings and purpose. The General  
7 Assembly finds that notification of a family member as defined  
8 in this Act is in the best interest of an unemancipated minor,  
9 and the General Assembly's purpose in enacting this parental  
10 notice law is to further and protect the best interests of an  
11 unemancipated minor.

12 The medical, emotional, and psychological consequences of  
13 abortion are sometimes serious and long-lasting, and immature  
14 minors often lack the ability to make fully informed choices  
15 that consider both the immediate and long-range consequences.

16 Parental consultation is usually in the best interest of  
17 the minor and is desirable since the capacity to become  
18 pregnant and the capacity for mature judgment concerning the  
19 wisdom of an abortion are not necessarily related.

20 Section 10. Definitions. As used in this Act:

21 "Abortion" means the use of any instrument, medicine,  
22 drug, or any other substance or device to terminate the

1 pregnancy of a woman known to be pregnant with an intention  
2 other than to increase the probability of a live birth, to  
3 preserve the life or health of a child after live birth, or to  
4 remove a dead fetus.

5 "Actual notice" means the giving of notice directly, in  
6 person, or by telephone.

7 "Adult family member" means a person over 21 years of age  
8 who is the parent, grandparent, step-parent living in the  
9 household, or legal guardian.

10 "Constructive notice" means notice by certified mail to  
11 the last known address of the person entitled to notice with  
12 delivery deemed to have occurred 48 hours after the certified  
13 notice is mailed.

14 "Incompetent" means any person who has been adjudged as  
15 mentally ill or as a person with a developmental disability  
16 and who, because of her mental illness or developmental  
17 disability, is not fully able to manage her person and for whom  
18 a guardian of the person has been appointed under Section  
19 11a-3(a)(1) of the Probate Act of 1975.

20 "Medical emergency" means a condition that, on the basis  
21 of the physician's good faith clinical judgment, so  
22 complicates the medical condition of a pregnant woman as to  
23 necessitate the immediate abortion of her pregnancy to avert  
24 her death or for which a delay will create serious risk of  
25 substantial and irreversible impairment of major bodily  
26 function.

1 "Minor" means any person under 18 years of age who is not  
2 or has not been married or who has not been emancipated under  
3 the Emancipation of Minors Act.

4 "Neglect" means the failure of an adult family member to  
5 supply a child with necessary food, clothing, shelter, or  
6 medical care when reasonably able to do so or the failure to  
7 protect a child from conditions or actions that imminently and  
8 seriously endanger the child's physical or mental health when  
9 reasonably able to do so.

10 "Physical abuse" means any physical injury intentionally  
11 inflicted by an adult family member on a child.

12 "Physician" means any person licensed to practice medicine  
13 in all its branches under the Illinois Medical Practice Act of  
14 1987.

15 "Sexual abuse" means any sexual conduct or sexual  
16 penetration as defined in Section 11-0.1 of the Criminal Code  
17 of 2012 that is prohibited by the criminal laws of the State of  
18 Illinois and committed against a minor by an adult family  
19 member as defined in this Act.

20 Section 15. Notice to adult family member. No person shall  
21 knowingly perform an abortion upon a minor or upon an  
22 incompetent person unless the physician or his or her agent  
23 has given at least 48 hours actual notice to an adult family  
24 member of the pregnant minor or incompetent person of his or  
25 her intention to perform the abortion, unless that person or

1 his or her agent has received a written statement by a  
2 referring physician certifying that the referring physician or  
3 his or her agent has given at least 48 hours notice to an adult  
4 family member of the pregnant minor or incompetent person. If  
5 actual notice is not possible after a reasonable effort, the  
6 physician or his or her agent must give 48 hours constructive  
7 notice.

8 Section 20. Exceptions. Notice shall not be required under  
9 this Act if:

10 (1) the minor or incompetent person is accompanied by  
11 a person entitled to notice; or

12 (2) notice is waived in writing by a person who is  
13 entitled to notice; or

14 (3) the attending physician certifies in the patient's  
15 medical record that a medical emergency exists and there  
16 is insufficient time to provide the required notice; or

17 (4) the minor declares in writing that she is a victim  
18 of sexual abuse, neglect, or physical abuse by an adult  
19 family member as defined in this Act. The attending  
20 physician must certify in the patient's medical record  
21 that he or she has received the written declaration of  
22 abuse or neglect. Any notification of public authorities  
23 of abuse that may be required under other laws of this  
24 State need not be made by the person performing the  
25 abortion until after the minor receives an abortion that

1 otherwise complies with the requirements of this Act; or  
2 (5) notice is waived under Section 25.

3 Section 25. Procedure for judicial waiver of notice.

4 (a) The requirements and procedures under this Section are  
5 available to minors and incompetent persons whether or not  
6 they are residents of this State.

7 (b) The minor or incompetent person may petition any  
8 circuit court for a waiver of the notice requirement and may  
9 participate in proceedings on her own behalf. The court shall  
10 appoint a guardian ad litem for her. Any guardian ad litem  
11 appointed under this Act shall act to maintain the  
12 confidentiality of the proceedings. The circuit court shall  
13 advise her that she has a right to court-appointed counsel and  
14 shall provide her with counsel upon her request.

15 (c) Court proceedings under this Section shall be  
16 confidential and shall ensure the anonymity of the minor or  
17 incompetent person. All court proceedings under this Section  
18 shall be sealed. The minor or incompetent person shall have  
19 the right to file her petition in the circuit court using a  
20 pseudonym or using solely her initials. All documents related  
21 to this petition shall be confidential and shall not be made  
22 available to the public.

23 These proceedings shall be given precedence over other  
24 pending matters to the extent necessary to ensure that the  
25 court reaches a decision promptly. The court shall rule and

1 issue written findings of fact and conclusions of law within  
2 48 hours of the time that the petition is filed, except that  
3 the 48-hour limitation may be extended at the request of the  
4 minor or incompetent person. If the court fails to rule within  
5 the 48-hour period and an extension is not requested, then the  
6 petition shall be deemed to have been granted, and the notice  
7 requirement shall be waived.

8 (d) Notice shall be waived if the court finds by a  
9 preponderance of the evidence either:

10 (1) that the minor or incompetent person is  
11 sufficiently mature and well enough informed to decide  
12 intelligently whether to have an abortion, or

13 (2) that notification under Section 15 of this Act  
14 would not be in the best interests of the minor or  
15 incompetent person.

16 (e) A court that conducts proceedings under this Section  
17 shall issue written and specific factual findings and legal  
18 conclusions supporting its decision and shall order that a  
19 confidential record of the evidence and the judge's findings  
20 and conditions be maintained.

21 (f) An expedited confidential appeal shall be available,  
22 as the Supreme Court provides by rule, to any minor or  
23 incompetent person to whom the circuit court denies a waiver  
24 of notice. An order authorizing an abortion without notice  
25 shall not be subject to appeal.

26 (g) The Supreme Court is respectfully requested to

1 promulgate any rules and regulations necessary to ensure that  
2 proceedings under this Act are handled in an expeditious and  
3 confidential manner.

4 (h) No fees shall be required of any minor or incompetent  
5 person who avails herself of the procedures provided by this  
6 Section.

7 Section 30. Minor's consent to abortion. A person may not  
8 perform an abortion on a minor without the minor's consent,  
9 except in a medical emergency.

10 Section 35. Reports. The Department of Public Health shall  
11 comply with the reporting requirements set forth in the  
12 consent decree in *Herbst v. O'Malley*, case no. 84-C-5602 in  
13 the U.S. District Court for the Northern District of Illinois,  
14 Eastern Division.

15 Section 40. Penalties.

16 (a) Any physician who willfully fails to provide notice as  
17 required under this Act before performing an abortion on a  
18 minor or an incompetent person shall be referred to the  
19 Illinois State Medical Disciplinary Board for action in  
20 accordance with Section 22 of the Medical Practice Act of  
21 1987.

22 (b) Any person, not authorized under this Act, who signs  
23 any waiver of notice for a minor or incompetent person seeking



1 an abortion, is guilty of a Class C misdemeanor.

2 Section 45. Immunity. Any physician who, in good faith,  
3 provides notice in accordance with Section 15 or relies on an  
4 exception under Section 20 shall not be subject to any type of  
5 civil or criminal liability or discipline for unprofessional  
6 conduct for failure to give required notice.

7 Section 50. Severability and inseverability. If any  
8 provision of this Act or its application to any person or  
9 circumstance is held invalid, the invalidity of that provision  
10 or application does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, except that Section 25 is  
13 inseverable to the extent that if all or any substantial and  
14 material part of Section 25 is held invalid, then the entire  
15 Act is invalid.

16 (20 ILCS 4111/Act rep.)

17 Section 90. The Youth Health and Safety Act is repealed.

18 Section 99. Effective date. This Act takes effect upon  
19 becoming law or on the date Public Act 102-685 takes effect,  
20 whichever is later.