

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H4/2/03 S4/15/03*

# A Bill

HOUSE BILL 2431

5 By: Representative Lamoureux  
6  
7

## For An Act To Be Entitled

9 AN ACT TO REQUIRE PARENTAL CONSENT BEFORE  
10 PERFORMING AN ABORTION ON A MINOR; AND FOR OTHER  
11 PURPOSES.  
12

### Subtitle

13 AN ACT TO REQUIRE PARENTAL CONSENT  
14 BEFORE PERFORMING AN ABORTION ON A  
15 MINOR.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code Section § 20-16-801 is amended to read as  
22 follows:

23 20-16-801. Notification required.

24 ~~No abortion operation shall be performed upon an unemancipated minor,~~  
25 ~~or upon a woman for whom a guardian or custodian has been appointed because~~  
26 ~~of a finding of incompetency, until at least forty eight (48) hours after~~  
27 ~~written notice of the pending operation has been delivered in the manner, and~~  
28 ~~subject to the exceptions, provided in this subchapter.~~

29 Except as otherwise provided in §§ 20-16-804 and 20-16-805, no person  
30 shall perform an abortion upon an unemancipated minor, or upon a woman for  
31 whom a guardian or custodian has been appointed because of a finding of  
32 incompetency, unless he or she or his or her agent first obtains the written  
33 consent of either parent or the legal guardian or custodian.  
34

35 SECTION 2 Arkansas Code Section § 20-16-802 is amended to read as  
36 follows:



1 20-16-802. Definitions.

2 As used in this subchapter, unless the context otherwise requires:

3 (1) "Abortion" shall mean the intentional termination of the  
4 pregnancy of a woman known to be pregnant with an intention other than to  
5 increase the probability of a live birth or to remove a dead or dying fetus;

6 (2) "Minor" means an individual under the age of eighteen (18)  
7 years;

8 (3) "Parent" shall mean ~~both parents~~ either parent of the  
9 pregnant woman if they are both living; one (1) parent of the pregnant woman  
10 if only one (1) is living or if the second one (1) cannot be located through  
11 reasonably diligent effort; or the court-appointed guardian or custodian if  
12 the pregnant woman has one; and

13 (4) "Unemancipated minor" means a minor who is under the care,  
14 custody, and control of her parent or parents.

15  
16 SECTION 3. Arkansas code Section § 20-16-803 is amended to read as  
17 follows:

18 *20-16-803. Manner of ~~notice~~ consent.*

19 ~~(a) Notice shall be addressed to the parent at the usual place of abode~~  
20 ~~of the parent and delivered personally to the parent by the physician or an~~  
21 ~~agent.~~

22 ~~(b) In lieu of the delivery required by subsection (a), notice shall be~~  
23 ~~made by certified mail addressed to the parent at the usual place of abode of~~  
24 ~~the parent, with return receipt requested and delivery restricted to the~~  
25 ~~addressee. Delivery shall be deemed to occur at twelve o'clock noon on the~~  
26 ~~next day, subsequent to mailing, on which regular mail delivery takes place.~~

27 (a) The person who performs the abortion or his or her agent shall  
28 obtain or be provided with the written consent from either parent or legal  
29 guardian.

30 (b) The written consent shall include, but not be limited to the  
31 following information:

32 (1) Name and birthdate of the minor;

33 (2) Name of the parent or legal guardian;

34 (3) Statement from the parent or legal guardian that he or she  
35 is aware that the minor desires an abortion and that he or she does consent  
36 to the abortion;

1           (4) The date; and

2           (5) Notarized signature of the parent or legal guardian.

3           (c) A notarized signature is not required if the person who shall  
4 perform the abortion or his or her agent witnesses the signature of the  
5 parent or legal guardian and signs the written consent as a witness.

6           (d) Prior to signing the written consent as a witness, the person who  
7 shall perform the abortion, or his or her agent, shall obtain from the parent  
8 or legal guardian positive proof of identification in the form of a valid,  
9 government issued photo identification card.

10           (e) A photocopy of the proof of identification and the written consent  
11 statement shall be maintained in the minor's or incompetent woman's medical  
12 records for a period of five (5) years from the date of the abortion.

13  
14           SECTION 4 Arkansas Code Section § 20-16-804 is amended to read as  
15 follows:

16           20-16-804. Judicial relief from requirement.

17           Notwithstanding the provisions of §§ 20-16-801 and 20-16-803, if a  
18 pregnant minor or incompetent woman elects not to allow the ~~notification~~  
19 consent of one or both parents or guardian or custodian, then, in that event:

20           (1)(A) Any judge of a probate court shall, upon petition or  
21 motion and after an appropriate hearing, authorize a physician to perform the  
22 abortion if said judge determines that the pregnant minor or incompetent  
23 woman is mature and capable of giving informed consent to the proposed  
24 abortion.

25           (B) If said judge determines that the pregnant minor or  
26 incompetent woman is not mature, or if the pregnant woman does not claim to  
27 be mature, the judge shall determine whether the performance of an abortion  
28 upon her without ~~notification~~ consent of her parents, guardian, or custodian  
29 would be in her best interests and shall authorize a physician to perform the  
30 abortion without such ~~notification~~ consent if said judge concludes that the  
31 pregnant minor or incompetent woman's best interests would be served thereby.

32           (2) Such a pregnant minor or incompetent woman may participate in  
33 proceedings in the court on her own behalf. However, the court shall advise  
34 her that she has a right to court-appointed counsel and shall, upon her  
35 request, provide her with such counsel.

36           (3) Proceedings in the court under this subchapter shall be

1 confidential and shall be given such precedence over other pending matters so  
 2 that the court may reach a decision promptly and without delay so as to serve  
 3 the best interests of the pregnant minor or incompetent woman. The judge  
 4 shall make in writing specific factual findings and legal conclusions  
 5 supporting the decision and shall order a record of the evidence to be  
 6 maintained, including the judge's own findings and conclusions.

7 (4) An expedited confidential appeal shall be available to any  
 8 such pregnant minor or incompetent woman for whom the court denies an order  
 9 authorizing an abortion without ~~notification~~ consent. An order authorizing an  
 10 abortion without ~~notification~~ consent shall not be subject to appeal.

11 (5) No filing fees shall be required of any such pregnant minor  
 12 or incompetent woman at either the trial or the appellate level.

13  
 14 SECTION 5. Arkansas Code Section § 20-16-805 is amended to read as  
 15 follows:

16 20-16-805. Limitations on requirement.

17 ~~Notification~~ Consent shall not be required under this subchapter if:

18 (1) The attending physician certifies in the pregnant minor or  
 19 incompetent woman's medical record that the abortion is necessary to prevent  
 20 the woman's death and there is insufficient time to ~~provide the required~~  
 21 ~~notice~~ obtain the required consent; or

22 ~~(2) The abortion is authorized in writing by the person or~~  
 23 ~~persons who are entitled to notice; or~~

24 ~~(3) A pregnant minor or incompetent woman declares that she is a~~  
 25 ~~victim of child abuse or neglect, as defined in § 12-12-502, provided that a~~  
 26 ~~report of such abuse or neglect shall be made as provided in § 12-12-504.~~

27 (2) A judicial bypass is obtained under § 20-16-804.

28  
 29 SECTION 6. Arkansas Code Section 20-16-806 is amended to read as  
 30 follows:

31 20-16-806. Penalty.

32 (a) The performance of an abortion in violation of this subchapter  
 33 shall be a Class A misdemeanor and shall be grounds for a civil action by a  
 34 person ~~wrongfully denied notification~~ whose consent is required.

35 ~~(b) A person shall not be held liable under this subchapter if:~~

36 ~~(1) The person establishes by written evidence that the person~~

1 ~~relied upon evidence sufficient to convince a careful and prudent person that~~  
2 ~~the representations of the pregnant minor or incompetent woman regarding~~  
3 ~~information necessary to comply with this subchapter were bona fide and true;~~  
4 ~~or~~

5 ~~(2) If the person attempted with reasonable diligence to deliver~~  
6 ~~notice, but was unable to do so.~~

7 ~~(e)(b) Nothing in this subchapter shall be construed to allow the~~  
8 ~~charging or conviction of a woman with any criminal offense in the death of~~  
9 ~~her own unborn child in utero.~~

10  
11 *SECTION 7. Arkansas Code § 20-16-808 is amended to read as follows:*  
12 *20-16-808. When notification consent of parent not required.*

13 *Notification Consent under this subchapter shall not be required to be*  
14 *given to a parent obtained from a parent if:*

15 *(1) The Both of the parent's whereabouts are unknown; or*

16 *(2)(A) The parent has not been in contact with the minor's*  
17 *custodial parent or the minor for at least one (1) year; or If the minor has*  
18 *only one (1) living parent and the minor states by affidavit that the parent*  
19 *has committed incest with the minor, has raped the minor, or has otherwise*  
20 *sexually abused the minor.*

21 *(B) The attending physician shall report the abuse as*  
22 *provided under § 12-12-504 and § 12-12-507.*

23 ~~(3) If the minor states by affidavit that the parent has~~  
24 ~~committed incest with the minor or raped the minor or otherwise physically or~~  
25 ~~sexually abused the minor.~~

26  
27 *SECTION 8. Arkansas Code Title 20, Chapter 16, Subchapter 8, is*  
28 *amended to as a new section to read as follows:*

29 *20-16-809. When consent of guardian not required.*

30 *Consent under this subchapter shall not be required to be obtained from*  
31 *a guardian or custodian if the guardianship or custody order has expired or*  
32 *is otherwise no longer in effect.*

33  
34 /s/ Lamoureux