

Act 270 of the 1989 Regular Session.

Act 270

HB1256

By: Representatives Willems, McCuiston, Collier, Rice,
Hutchinson, and Landers

"AN ACT TO AMEND TITLE 20, CHAPTER 16 OF THE ARKANSAS CODE TO
PROVIDE FOR PARENTAL NOTIFICATION OF A MINOR'S INTENT TO
OBTAIN AN ABORTION; AND FOR OTHER PURPOSES."

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

SECTION 1. Title 20, Chapter 16 of the Arkansas Code is hereby amended
by adding a new subchapter to read as follows:

"SUBCHAPTER 8 - ABORTION -
PARENTAL NOTIFICATION

20-16-801. Notification.

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

20-16-802. Definitions.

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

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

(b) 'Minor' means an individual under the age of eighteen (18) years;

(c) 'Unemancipated minor' means a minor who is under the care, custody
and control of her parent or parents;

(d) 'Parent' shall mean both parents of the pregnant woman if they are
both living, one parent of the pregnant woman if only one is living or if the
second one cannot be located through reasonably diligent effort, or the
court-appointed guardian or custodian if the pregnant woman has one.

20-16-803. Manner of notice.

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

(b) In lieu of the delivery required by subparagraph (a), notice shall
be made by certified mail addressed to the parent at the usual place of abode
of the parent, with return receipt requested and delivery restricted to the
addressee. Delivery shall be deemed to occur at 12 o'clock noon on the next
day, subsequent to mailing, on which regular mail delivery takes place.

20-16-804. Relief from notification requirement.

Notwithstanding the provisions of Sections 20-16-801 and 20-16-803, if a
pregnant minor or incompetent woman elects not to allow the notification of
of her

one or both parents or guardian or custodian, then in that event:

(a) Any judge of a probate court shall, upon petition or motion and
after an appropriate hearing, authorize a physician to perform the abortion
if said judge determines that the pregnant minor or incompetent woman is
mature and capable of giving informed consent to the proposed abortion.
If said judge determines that the pregnant minor or incompetent woman is not
mature, or if the pregnant woman does not claim to be mature, the judge

shall determine whether the performance of an abortion upon her without notification of her parents, guardian, or custodian would be in her best interests and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant minor or incompetent woman's best interests would be served thereby.

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

(c) Proceedings in the court under this subchapter shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant minor or incompetent woman. The judge shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(d) An expedited confidential appeal shall be available to any such pregnant minor or incompetent woman for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor or incompetent woman at either the trial or the appellate level.

20-16-805. Limitations.

Notification shall not be required under this subchapter if:

(a) The attending physician certifies in the pregnant minor or incompetent woman's medical record that the abortion is necessary to prevent the woman's death and there is insufficient time to provide the required notice; or

(b) The abortion is authorized in writing by the person or persons who are entitled to notice; or

(c) A pregnant minor or incompetent woman declares that she is a victim of child abuse or neglect, as defined in section 12-12-502; provided, that a report of such abuse or neglect shall be made as provided in section 12-12-504.

20-16-806. Penalty.

The performance of an abortion in violation of this subchapter shall be a Class A misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this subchapter if (i) the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor or incompetent woman regarding information necessary to comply with this subchapter were bona fide and true, or (ii) if the person attempted with reasonable diligence to deliver notice, but was unable to do so.

20-16-807. Intent.

This subchapter is not intended, and shall not be construed, to create an affirmative right to legal abortion.

20-16-808. Notification to parent not required under certain circumstances. Notification under this Act shall not be required to be given to a parent if (a) the parent's whereabouts are unknown; or (b) the parent has not been in contact with the minor's custodial parent or the minor for at least one (1) year; or (c) if the minor states by affidavit that the parent has committed incest with the minor or raped the minor or otherwise physically or sexually abused the minor.

SECTION 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 1, 1989
