THE PARENTAL RIGHTS RESTORATION ACT

Act 211 of 1990

An initiation of Legislation to require parental consent for abortions performed on unemancipated minors and to provide a judicial alternative to parental consent; to provide for certain rights, powers, and duties of departments, individuals, and courts; and to prescribe penalties.

History: 1990, Act 211, Eff. Mar. 28, 1991 ;-- Am. 1991, Act 80, Imd. Eff. July 18, 1991
Compiler's Notes: This new act was proposed by initiative petition pursuant to Const 1963, art 2, § 9. On September 12, 1990, the initiative petition was approved by an affirmative vote of the majority of the Senators elect and filed with the Secretary of State. On September 12, 1990, the initiative petition was approved by an affirmative vote of the majority of the Members elect of the House of Representatives and filed with the Secretary of State. The Legislature did not vote pursuant to Const 1963, art 4, § 27, to give immediate effect to this enactment.

The People of the State of Michigan enact:

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722.901 Short title.

Section 1.

This act shall be known and may be cited as "the parental rights restoration act".

History: 1990, Act 211, Eff. Mar. 28, 1991
Popular Name: Parental Consent Law

722.902 Definitions.

Section 2.

As used in this act:

(a) "Abortion" means the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) "Medical emergency" means that condition which, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate an immediate abortion of that woman's pregnancy to avert her death, or for which a delay in performing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function.

(c) "Minor" means a person under the age of 18 years who is not emancipated pursuant to section 4 of Act No. 293 of the Public Acts of 1968, being section 722.4 of the Michigan Compiled Laws.

(d) "Next friend" means a person who is not 1 of the following:

(i) A physician who performs abortions.

(ii) A person who is employed by, or receives financial consideration from, a physician who performs abortions or an organization that provides abortions or abortion counseling and referral services.

(iii) A person who serves as a board member or volunteer to an organization that provides abortions or abortion counseling and referral services.

History: 1990, Act 211, Eff. Mar. 28, 1991 ;-- Am. 1992, Act 244, Eff. Mar. 31, 1993
Popular Name: Parental Consent Law

722.903 Consent to abortion on minor; petition for waiver of parental consent.

Section 3.

(1) Except as otherwise provided in this act, a person shall not perform an abortion on a minor without first obtaining the written consent of the minor and 1 of the parents or the legal guardian of the minor.

(2) If a parent or the legal guardian is not available or refuses to give his or her consent, or if the minor elects not to seek consent of a parent or the legal guardian, the minor may petition the probate court pursuant to section 4 for a waiver of the parental consent requirement of this section.

History: 1990, Act 211, Eff. Mar. 28, 1991
Popular Name: Parental Consent Law

722.904 Jurisdiction of probate court; confidential and expeditious proceedings; granting waiver of parental consent; reporting suspected child abuse; duties of probate court on disclosure of sexual abuse; "child abuse" and "sexual abuse" defined.

Section 4.

(1) The probate court has jurisdiction of proceedings related to a minor's petition for a waiver of parental consent.

(2) Proceedings held pursuant to this act shall be completed with confidentiality and sufficient expedition to provide an effective opportunity for the minor to provide self-consent to an abortion, in accordance with all of the following:

(a) The probate court shall, upon its first contact with a minor seeking a waiver of parental consent under this act, provide the minor with notice of the minor's right to all of the following:

(i) Confidentiality of the proceedings, including the right to use initials in the petition.

(ii) Court appointment of an attorney or guardian ad litem.

(iii) Assistance with preparing and filing the petition.

(b) A minor may file a petition for waiver of parental consent in the probate court of the county in which the minor resides. For purposes of this act, the county in which the minor resides means the county in which the minor's residence is located or the county in which the minor is found.

(c) Upon request of the minor, the probate court shall provide the minor with assistance in preparing and filing the petition for waiver of parental consent.

(d) A minor may file a petition for waiver of parental consent under this act on her own behalf or through a next friend. The minor may use initials or some other means of assuring confidentiality in the petition.

(e) Upon request of the minor, the probate court shall appoint an attorney or guardian ad litem within 24 hours to represent the minor in proceedings under this section.

(f) A minor is not required to pay a fee for proceedings under this section.

(g) A hearing on a petition for waiver of parental consent under this act shall be held within 72 hours, excluding Sundays and holidays, after the petition is filed and shall be closed to the public. All records of proceedings related to the petition for waiver of parental consent under this act are confidential.

(h) The probate court that hears the petition for waiver of parental consent shall issue and make a part of the confidential record its specific findings of fact and conclusions of law in support of its ruling either on the record or in a written opinion.

(i) A written order granting or denying a petition for waiver of parental consent filed pursuant to this act shall be issued within 48 hours, excluding Sundays and holidays, after the hearing on the petition is held.

(3) The probate court shall grant a waiver of parental consent if it finds either of the following:

(a) The minor is sufficiently mature and well-enough informed to make the decision regarding abortion independently of her parents or legal guardian.

(b) The waiver would be in the best interests of the minor.

(4) A minor who is denied a waiver under this section may appeal the probate court's decision to the court of appeals. Appeal proceedings shall be expedited and confidential. The notice of appeal shall be filed within 24 hours of the issuance of the order denying the petition. The appeal shall be perfected within 72 hours, excluding Sundays and holidays, from the filing of the notice of appeal.

(5) The confidentiality requirements of this section do not prevent the probate court from reporting suspected child abuse under section 4 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.624 of the Michigan Compiled Laws.

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(6) If a minor who is seeking a waiver of parental consent reveals to the probate court that she is the victim of sexual abuse, and that her pregnancy is, or may be, the result of sexual abuse, the probate court shall immediately do all of the following:

(a) Report the suspected sexual abuse to the department of social services or a law enforcement agency pursuant to the child protection law, Act No. 238 of the Public Acts of 1975, being sections 722.621 to 722.636 of the Michigan Compiled Laws.

(b) Inform the minor that there are laws designed to protect her, including all of the following provisions of chapter XIIA of the probate code, Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.28 of the Michigan Compiled Laws:

(i) That a law enforcement officer may without court order take the minor into temporary protective custody if, after investigation, the officer has reasonable grounds to conclude that the minor's health, safety, or welfare would be endangered by leaving her in the custody of her parent or legal guardian.

(ii) That the juvenile division of the probate court may, upon learning of the suspected sexual abuse, immediately hold a preliminary inquiry to determine whether a petition for court jurisdiction should be filed or whether other action should be taken.

(iii) That the juvenile court shall appoint an attorney to represent the minor in protective proceedings.

(iv) That after a petition has been filed, the juvenile court may order that the minor be placed with someone other than her parent or legal guardian pending trial or further court order if such placement is necessary to avoid substantial risk to the minor's life, physical health, or mental well-being.

(7) As used in this section, "child abuse" and "sexual abuse" mean those terms as defined in section 2 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.622 of the Michigan Compiled Laws.

History: 1990, Act 211, Eff. Mar. 28, 1991
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722.905 Medical emergency abortion.

Section 5.

The requirements of Section 3 do not apply to an abortion performed pursuant to a medical emergency.

History: 1990, Act 211, Eff. Mar. 28, 1991 ;-- Am. 1992, Act 244, Eff. Mar. 31, 1993
Popular Name: Parental Consent Law

722.906 Residency of minor.

Section 6.

The requirements of this act apply regardless of whether the minor is a resident of this state.

History: 1990, Act 211, Eff. Mar. 28, 1991
Popular Name: Parental Consent Law

722.907 Violation as misdemeanor; failure to obtain parental consent or copy of waiver as evidence in civil action; exemplary damages.

Section 7.

(1) A person who intentionally performs an abortion in violation of this act is guilty of a misdemeanor.

(2) A person's failure to obtain either parental consent pursuant to this act or a copy of a waiver granted under

section 4 before performing an abortion on a minor is prima facie evidence in appropriate civil actions of his or her failure to obtain informed consent to perform the abortion or of his or her interference with family relations. A court shall not construe the law of this state to preclude exemplary damages in a civil action related to violations of this act.

History: 1990, Act 211, Eff. Mar. 28, 1991
Popular Name: Parental Consent Law

722.908 Right to abortion not created; prohibited conduct.

Section 8.

(1) This act does not create a right to an abortion.
(2) Notwithstanding any other provision of this act, a person shall not perform an abortion that is prohibited by law.

History: 1990, Act 211, Eff. Mar. 28, 1991
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722.909 Repealed. 1991, Act 80, Imd. Eff. July 18, 1991.

Compiler's Notes: The repealed section pertained to required information for certain pupils and standardized information form.
Popular Name: Parental Consent Law