

1999 DRAFTING REQUEST

Bill

Received: **01/25/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Neal Kedzie (414) 778-5780**

By/Representing: **Mary Klaver, WI Right to Life**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - miscellaneous
Health - abortion**

Extra Copies:

Topic:

Parental consent for a minor's abortion

Instructions:

Draft companion for -0505/2

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 01/25/99	wjackson 01/25/99		_____			S&L
/1			hhagen 01/26/99	_____	lrb_docadmin 01/26/99	lrb_docadmin 02/3/99	

FE Sent For: **(02/3/99 .
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State of Wisconsin
1999 - 2000 LEGISLATURE

(see p. 2)

1990/1
LRB-050572
GMM:wlj&ksh:hmh

1999 BILL

AN ACT ^{REGEN} *to repeal* 48.375 (2) (b), 48.375 (2) (em), 48.375 (4) (b) 1m. and 48.375 (7) (bm); and *to amend* 46.24, 48.23 (1) (cm), 48.257 (1) (h), 48.257 (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c), 48.375 (4) (a) 1., 48.375 (4) (b) 1., 48.375 (4) (b) 3., 48.375 (6), 48.375 (7) (a) (intro.), 48.375 (7) (a) 4., 48.375 (7) (b) (intro.), 48.375 (7) (d), 48.375 (7) (f), 69.186 (1) (j), 809.105 (2), 809.105 (3) (a), 809.105 (3) (d), 809.105 (5), 809.105 (8), 809.105 (8m), 809.105 (9), 809.105 (10), 809.105 (11) (a) (intro.), 809.105 (11) (a) 3., 809.105 (11) (cm), 809.105 (11) (d), 809.105 (11) (e), 809.105 (13) and 895.037 (3) (a) of the statutes; **relating to:** the requirement that an unemancipated minor obtain parental or other consent or a judicial waiver of that consent requirement before she have an abortion.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the law that requires an unemancipated minor to obtain parental or other consent or a judicial waiver of that consent requirement before she may have an abortion (generally referred to as "the parental consent" law).

BILL***Consent or judicial waiver requirement.***

Under current law, subject to certain exceptions, before an unemancipated minor may have an abortion, she must have the written consent of one of her parents; or of her guardian or legal custodian, if one has been appointed; or of an adult family member; or one of her foster parents or treatment foster parents, if the minor has been placed in a foster home or a treatment foster home and the minor's parent has signed a waiver granting the department of health and family services, a county department of human services or social services, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor; unless the minor obtains a waiver of this requirement from the circuit court. Current law defines "adult family member" as a grandparent, aunt, uncle, sister or brother who is at least 25 years of age.

This bill eliminates the authority of an adult family member to consent to an unemancipated minor's abortion. The bill also requires the parent, guardian, legal custodian, foster parent or treatment foster parent who consents to the minor's abortion to sign and acknowledge, that is, declare that he or she has signed the consent document for the purpose stated in the consent document, before a notary public. The bill requires the notary public, in taking the acknowledgment, to determine, either from personal knowledge or satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose signature is on the consent document, that the person is, in fact, the parent, guardian, legal custodian, foster parent or treatment foster parent of the minor and that the person does, in fact, have the authority to consent to medical services or treatment on behalf of the minor. The bill also requires the notary public to keep confidential any information acquired in taking the acknowledgment.

Exceptions to consent or judicial waiver requirement.

Under current law, the consent or judicial waiver requirement ~~also~~ does not apply if the person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion. This bill provides that the consent or judicial waiver requirement does not apply if a medical emergency, as defined in the law, requiring voluntary and informed consent to an abortion (informed consent law) exists. The informed consent law defines a "medical emergency" as a condition that, in a physician's reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a 24-hour delay in the performance or inducement of the abortion will create a serious risk of substantial and irreversible impairment of one or more of the woman's major bodily functions.

In addition, under current law, the consent or judicial waiver requirement does not apply if a psychiatrist or psychologist states in writing that he or she believes that the minor is likely to commit suicide rather than seek consent or a judicial waiver. This bill eliminates that exception.

BILL***Civil liability for violation of consent or judicial waiver requirement.***

Under current law, a person who intentionally performs or induces an abortion on or for a minor without prior consent or waiver of the consent requirement by a court is liable to the minor and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion. This bill eliminates the requirement that the violation of the consent or judicial waiver requirement be intentional.

Judicial waiver procedures.

Under current law, a minor who is seeking an abortion, or a member of the clergy on behalf of the minor, may petition a circuit court for a waiver of the consent requirement. If the minor files a petition on her own behalf, the minor must be present at an initial appearance at which the court appoints counsel for the minor and sets a date for a hearing to determine whether the minor is mature and well-informed enough to make the abortion decision on her own or whether the performance or inducement of an abortion is in the minor's best interests. If a member of the clergy files a petition on behalf of the minor, the member of the clergy may be present at the initial appearance instead of the minor and the court need not appoint counsel for the minor or set a date for a hearing on the petition. Instead, the member of the clergy must file with the petition an affidavit stating that the member of the clergy has explored with the minor alternative choices for managing the minor's pregnancy, including keeping the baby or placing the baby for adoption, and has discussed with the minor the possibility of obtaining consent for the abortion and whether or not obtaining that consent would be in the minor's best interests. The court may grant the petition, without hearing, based on the member of the clergy's affidavit.

This bill eliminates the option of permitting a member of the clergy to file a petition and affidavit on behalf of the minor. Under the bill, the minor must file her own petition and be present at the initial appearance, and the court must appoint counsel for the minor and hold a hearing on the petition.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 46.24 of the statutes is amended to read:

46.24 Assistance to minors concerning parental consent for abortion.

If a minor who is contemplating an abortion requests assistance from a county department under s. 46.215, 46.22 or 46.23 in seeking the consent of the minor's parent, guardian or legal custodian, ~~or in seeking the consent of an adult family~~

BILL**SECTION 1**

~~member, as defined in s. 48.375 (2) (b), for the contemplated abortion or in seeking a waiver from the circuit court, the county department shall provide assistance, including, if so requested, accompanying the minor as appropriate.~~

SECTION 2. 48.23 (1) (cm) of the statutes is amended to read:

48.23 (1) (cm) Any minor who is subject to the jurisdiction of the circuit court under s. 48.16 ~~and who is required to appear in court~~ shall be represented by counsel.

SECTION 3. 48.257 (1) (h) of the statutes is amended to read:

48.257 (1) (h) If the minor is not represented by counsel, the place where and the manner in which the minor wishes to be notified of proceedings under s. 48.375 (7) until appointment of counsel under s. 48.375 (7) (a) 1. ~~If the petition is filed by a member of the clergy on behalf of the minor, the place where and manner in which the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).~~

SECTION 4. 48.257 (4) of the statutes is amended to read:

48.257 (4) The clerk of circuit court shall give a copy of the petition to the minor ~~or to the member of the clergy who files a petition on behalf of the minor, if any.~~

SECTION 5. 48.27 (9) of the statutes is amended to read:

48.27 (9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only to the minor, her counsel, ~~if any, the member of the clergy who filed the petition on behalf of the minor, if any,~~ and her guardian ad litem, if any. The notice shall contain the title and case number of the proceeding, and the nature, location, date and time of the hearing or other proceeding. Notice to the minor ~~or to the member of the clergy, if any,~~ shall be provided as requested under s. 48.257 (1) (h) and, after appointment of the minor's counsel, ~~if any,~~ by her counsel.

SECTION 6. 48.273 (4) (b) of the statutes is amended to read:

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48.273 (4) (b) Personal service is required for notice of all proceedings under s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the minor shall be in the manner and at the place designated by the minor in the petition under s. 48.257 (1) until appointment of the minor's counsel, ~~if any~~, under s. 48.375 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7) unless the minor waives the immediate notice. If the minor waives the immediate notice, the notice shall be served at least 24 hours before the time of the hearing under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of providing the minor's full signature.

SECTION 7. 48.375 (2) (b) of the statutes is repealed.

SECTION 8. 48.375 (2) (c) of the statutes is amended to read:

48.375 (2) (c) "Counselor" means a physician including a physician specializing in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained member of the clergy, as defined in s. 765.002 (1). "Counselor" does not include any person who is employed by or otherwise affiliated with a reproductive health care facility, a family planning clinic or a family planning agency; any person affiliated with the performance of abortions, except abortions performed to save the life of the mother; or any person who may profit from giving advice to seek an abortion.

SECTION 9. 48.375 (2) (em) of the statutes is repealed.

SECTION 10. 48.375 (4) (a) 1. of the statutes is amended to read:

48.375 (4) (a) 1. The person or the person's agent has, either directly or through a referring physician or his or her agent, received and made part of the minor's medical record, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed written consent of one

BILL**SECTION 10**

of her parents; or of the minor's guardian or legal custodian, if one has been appointed; ~~or of an adult family member of the minor;~~ or of one of the minor's foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor. The minor's parent, guardian, legal custodian, foster parent or treatment foster parent shall sign and acknowledge the consent document before a notary public. In taking the acknowledgement, the notary public shall determine, either from personal knowledge or from satisfactory evidence consisting of one or more forms of identification containing the name, address, signature and photograph of the person, that the person appearing before the notary public and making the acknowledgment is the person whose true signature is on the consent document. The notary public shall also determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the acknowledgement is, in fact, the parent, guardian, legal custodian, foster parent or treatment foster parent of the minor and does, in fact, have the authority to consent to medical services or treatment on behalf of the minor. A notary public who takes an acknowledgment under this subdivision shall keep confidential any information acquired in taking the acknowledgment.

SECTION 11. 48.375 (4) (b) 1. of the statutes is amended to read:

48.375 (4) (b) 1. ~~The person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a~~ A medical emergency, as defined in s. 253.10 (2) (d), exists that complicates the pregnancy so as to require an immediate abortion.

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SECTION 12. 48.375 (4) (b) 1m. of the statutes is repealed.

SECTION 13. 48.375 (4) (b) 3. of the statutes is amended to read:

48.375 (4) (b) 3. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor, or the minor's guardian or legal custodian, if one has been appointed, ~~or an adult family member of the minor,~~ or a foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, has inflicted abuse on the minor. The person who intends to perform or induce the abortion shall place the statement in the minor's medical record. The person who intends to perform or induce the abortion shall report the abuse as required under s. 48.981 (2).

SECTION 14. 48.375 (6) of the statutes is amended to read:

48.375 (6) RIGHT TO PETITION COURT FOR WAIVER. Any pregnant minor who is seeking an abortion in this state, ~~and any member of the clergy on the minor's behalf,~~ may file a petition specified under s. 48.257 with any court for a waiver of the parental consent requirement under sub. (4) (a) 1.

SECTION 15. 48.375 (7) (a) (intro.) of the statutes is amended to read:

48.375 (7) (a) *Receipt of petition; initial appearance.* (intro.) On the date that a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next calendar day, the court shall hold an initial appearance in chambers at which the minor ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ is present and shall do all of the following:

BILL**SECTION 16**

SECTION 16. 48.375 (7) (a) 4. of the statutes is amended to read:

48.375 (7) (a) 4. Notify the minor, the minor's counsel, ~~if any, the member of the clergy who filed the petition on behalf of the minor, if any,~~ and the minor's guardian ad litem, if any, of the time, date and place of the hearing.

SECTION 17. 48.375 (7) (b) (intro.) of the statutes is amended to read:

48.375 (7) (b) *Hearing; evidence.* (intro.) The court shall hold a confidential hearing on a the petition ~~that is filed by a minor.~~ The hearing shall be held in chambers, unless a public fact-finding hearing is demanded by the minor through her counsel. At the hearing, the court shall consider the report of the guardian ad litem, if any, and hear evidence relating to all of the following:

SECTION 18. 48.375 (7) (bm) of the statutes is repealed.

SECTION 19. 48.375 (7) (d) of the statutes is amended to read:

48.375 (7) (d) *Time limit.* 1. The court shall make the determination under par. (c) and issue an order within 3 calendar days after the initial appearance unless the minor and her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ consent to an extension of the time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ of a certified copy of the court's order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ of a copy of the court's order denying the petition and shall also notify the minor

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by her counsel, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ that she has a right to initiate an appeal under s. 809.105.

1m. Except as provided under s. 48.315 (1) (b), (c) and (f), if the court fails to comply with the time limits specified under subd. 1. without the prior consent of the minor and the minor's counsel, ~~if any, or the member of the clergy who filed the petition on behalf of the minor, if any,~~ the minor and the minor's counsel, ~~if any, or the member of the clergy, if any,~~ shall select a temporary reserve judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order granting or denying the petition and the chief judge of the judicial administrative district in which the court is located shall assign the temporary reserve judge selected by the minor and the minor's counsel, ~~if any, or the member of the clergy, if any,~~ to make the determination and issue the order. A temporary reserve judge assigned under this subdivision to make a determination under par. (c) and issue an order granting or denying a petition shall make the determination and issue the order within 2 calendar days after the assignment, unless the minor and her counsel, ~~if any, or the member of the clergy who filed the petition on behalf of the minor, if any,~~ consent to an extension of that time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition, and shall notify the minor of the court's order, as provided under subd. 1.

2. Counsel for the minor, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ shall immediately, upon notification under subd. 1. or 1m. that the court has granted or denied the petition, notify the minor. If the court has granted the petition, counsel for the minor, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ shall hand deliver a certified copy of the court

BILL**SECTION 19**

order to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, ~~or the member of the clergy who filed the petition on behalf of the minor, if any,~~ shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this subdivision shall place the copy in the minor's medical record.

SECTION 20. 48.375 (7) (f) of the statutes is amended to read:

48.375 (7) (f) *Certain persons barred from proceedings.* No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, ~~or adult family member,~~ of any minor who is seeking a court determination under this subsection may attend, intervene or give evidence in any proceeding under this subsection.

SECTION 21. 69.186 (1) (j) of the statutes is amended to read:

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69.186 (1) (j) If the patient is a minor, whether consent was provided under s. 48.375 (4) (a) 1. for the abortion and, if so, the relationship of the individual providing consent to the minor; or, if consent under s. 48.375 (4) (a) 1. was not provided, on which of the bases under s. 48.375 (4) (a) 2. or (b) 1., 1g., ~~1m.~~, 2. or 3. the abortion was performed.

SECTION 22. 809.105 (2) of the statutes is amended to read:

809.105 (2) INITIATING AN APPEAL. Only a minor may initiate an appeal under this section. The minor shall initiate the appeal by filing, ~~or by a member of the clergy filing on the minor's behalf,~~ a notice of appeal with the clerk of the trial court in which the order appealed from was entered and shall specify in the notice of appeal the order appealed from. At the same time, the minor ~~or member of the clergy~~ shall notify the court of appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of the court of appeals. The clerk of the trial court shall assist the minor ~~or member of the clergy~~ in sending a copy of the notice of appeal to the clerk of the court of appeals. The minor may use the name "Jane Doe" instead of her name on the notice of appeal and all other papers filed with the court of appeals.

SECTION 23. 809.105 (3) (a) of the statutes is amended to read:

809.105 (3) (a) *Fee.* No fee for filing an appeal in the court of appeals under this section may be required of a minor ~~or of a member of the clergy who files an appeal under this section on behalf of the minor.~~

SECTION 24. 809.105 (3) (d) of the statutes is amended to read:

809.105 (3) (d) *Statement on transcript.* A minor ~~or member of the clergy~~ may not be required to file a statement on transcript in an appeal under this section.

SECTION 25. 809.105 (5) of the statutes is amended to read:

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809.105 (5) **TRANSCRIPT OF REPORTER'S NOTES.** At the time that a minor ~~or member of the clergy~~ files a notice of appeal, the minor ~~or member of the clergy~~ shall make arrangements with the reporter for the preparation of a transcript of the reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the transcript with the trial court within 2 calendar days after the notice of appeal is filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay the expense of transcript preparation under this subsection.

SECTION 26. 809.105 (8) of the statutes is amended to read:

809.105 (8) **ASSIGNMENT AND ADVANCEMENT OF CASES.** The court of appeals shall take cases appealed under this section in an order that ensures that a judgment is made within 4 calendar days after the appeal has been filed in the court of appeals. The time limit under this subsection may be extended with the consent of the minor and her counsel, ~~if any, or the member of the clergy who initiated the appeal under this section, if any.~~

SECTION 27. 809.105 (8m) of the statutes is amended to read:

809.105 (8m) **ORAL ARGUMENT.** If the court of appeals determines that a case appealed under this section is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel ~~or through the member of the clergy who filed the appeal under this section, if any,~~ or on the court of appeals' own motion, by telephone, unless the minor through her counsel ~~or the member of the clergy~~ demands that the oral argument be held in open court.

SECTION 28. 809.105 (9) of the statutes is amended to read:

809.105 (9) **COSTS.** The court of appeals may not assess costs against a minor ~~or member of the clergy~~ in an appeal under this section.

SECTION 29. 809.105 (10) of the statutes is amended to read:

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809.105 (10) REMITTITUR. (a) A judgment by the court of appeals under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the court of appeals reverses a trial court order denying a petition under s. 48.375 (7), the court of appeals shall immediately so notify the minor by personal service on her counsel ~~or the member of the clergy who initiated the appeal under this section, if any,~~ of a certified copy of the order of the court of appeals granting the minor's petition. If the court of appeals affirms the trial court order, it shall immediately so notify the minor by personal service on her counsel ~~or the member of the clergy who initiated the appeal under this section, if any,~~ of a copy of the order of the court of appeals denying the petition and shall also notify the minor by her counsel ~~or the member of the clergy who initiated the appeal under this section on behalf of the minor, if any,~~ that she may, under sub. (11), file a petition for review with the supreme court under s. 809.62. The court of appeals shall pay the expenses of service of notice under this subsection. The clerk of the court of appeals shall transmit to the trial court the judgment and opinion of the court of appeals and the record in the case filed under sub. (4), within 31 days after the date that the judgment and opinion of the court of appeals are filed. If a petition for review is filed under sub. (11), the transmittal shall be made within 31 days after the date that the supreme court rules on the petition for review.

(b) Counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall immediately, upon notification under par. (a) that the court of appeals has granted or denied the petition, notify the minor. If the court of appeals has granted the petition, counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy of the order of the court of appeals to the person who intends to

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perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the copy in the minor's medical record.

SECTION 30. 809.105 (11) (a) (intro.) of the statutes is amended to read:

809.105 (11) (a) (intro.) Only a minor ~~or the member of the clergy who initiated the appeal under this section, if any,~~ may initiate a review of an appeal under this section. The petition for review of an appeal in the supreme court shall contain:

SECTION 31. 809.105 (11) (a) 3. of the statutes is amended to read:

809.105 (11) (a) 3. The judgment and opinion of the court of appeals, and the findings of fact, conclusions of law and final order of the trial court that were furnished to the court of appeals. The court of appeals shall provide a copy of these papers to the minor, ~~if any, the member of the clergy who initiated the appeal under this section, if any,~~ her counsel or her guardian ad litem, if any, immediately upon request.

SECTION 32. 809.105 (11) (cm) of the statutes is amended to read:

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809.105 (11) (cm) If the supreme court determines that a case reviewed under this subsection is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel ~~or through the member of the clergy who initiated the appeal under this section, if any,~~ or on the supreme court's own motion, by telephone, unless the minor through her counsel ~~or the member of the clergy~~ demands that the oral argument be held in open court.

SECTION 33. 809.105 (11) (d) of the statutes is amended to read:

809.105 (11) (d) A judgment or decision by the supreme court under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the supreme court reverses a court of appeals order affirming a trial court order denying a petition under s. 48.375 (7), the supreme court shall immediately so notify the minor by personal service on her counsel, ~~if any, or on the member of the clergy who initiated the appeal under this section, if any,~~ of a certified copy of the order of the supreme court granting the minor's petition. If the supreme court affirms the order of the court of appeals, it shall immediately so notify the minor by her counsel ~~or by the member of the clergy who initiated the appeal under this section, if any.~~ The clerk of the supreme court shall transmit to the trial court the judgment, or decision, and opinion of the supreme court and the complete record in the case within 31 days after the date that the judgment, or decision, and opinion of the supreme court are filed. The supreme court shall pay the expense of service of notice under this subsection.

SECTION 34. 809.105 (11) (e) of the statutes is amended to read:

809.105 (11) (e) Counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall immediately, upon notification under par. (d) that the supreme court has granted or denied the petition, notify the

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minor. If the supreme court has granted the petition, counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy of the order of the supreme court to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, ~~if any, or the member of the clergy who initiated the appeal under this section, if any,~~ shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the order in the minor's medical record.

SECTION 35. 809.105 (13) of the statutes is amended to read:

809.105 (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home, and the minor's parent has signed a waiver granting the department of health and family services, a county department under s. 46.215, 46.22 or 46.23, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, ~~or adult family member, as defined in s. 48.375 (2)~~

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(b), of any minor who has initiated an appeal under this section may attend or intervene in any proceeding under this section.

SECTION 36. 895.037 (3) (a) of the statutes is amended to read:

895.037 (3) (a) A person who intentionally violates s. 48.375 (4) is liable to the minor on or for whom the abortion was performed or induced and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion including, but not limited to, damages for personal injury and emotional and psychological distress.

SECTION 37. Initial applicability.

(1) ABORTIONS PERFORMED OR INDUCED. The treatment of sections 46.24, 48.375 (2) (b) and (4) (a) 1. and (b) 1., 1m. and 3., 69.186 (1) (j) and 895.037 (3) (a) of the statutes first applies to abortions performed or induced on the effective date of this subsection.

(2) WAIVER PETITIONS FILED. The treatment of sections 48.23 (1) (cm), 48.257 (1) (h) and (4), 48.27 (9), 48.273 (4) (b), 48.375 (2) (c) and (em), (6) and (7) (a) (intro.) and 4., (b) (intro.), (bm), (d) and (f) and 809.105 (2), (3) (a) and (d), (5), (8), (8m), (9), (10), (11) (a) (intro.) and 3., (cm), (d) and (e) and (13) of the statutes first applies to petitions filed to initiate a proceeding under section 48.375 (7) of the statutes, as affected by this act, on the effective date of this subsection.

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/26/99

To: Representative Kedzie

Relating to LRB drafting number: LRB-1990


Topic

Parental consent for a minor's abortion

Subject(s)

Children - miscellaneous, Health - abortion

1. **JACKET** the draft for introduction Mal J. Kedzie
in the **Senate** _____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated. 

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction Mal J. Kedzie
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaisé, Senior Legislative Attorney
Telephone: (608) 266-9738

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