

MAINE STATE LEGISLATURE

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P. 11/18

L.D. 1152

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DATE: 2-5-04

(Filing No. S-379)

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STATE OF MAINE
SENATE
121ST LEGISLATURE
SECOND SPECIAL SESSION

SENATE AMENDMENT "A" to S.P. 376, L.D. 1152, Bill, "An Act To Authorize Collaborative Practice for Emergency Contraception"

Amend the bill in section 1 in that part designated "§13823." in the 2nd line (page 1, line 26 in L.D.) by striking out the following: "chapter" and inserting in its place the following: 'subchapter'

Further amend the bill in section 1 by inserting after that part designated "§13824." the following:

'§13825. Parental or judicial consent

1. Consent. Prior to performing any procedure on a minor authorized under this subchapter, a pharmacist shall obtain:

A. The informed written consent of the minor and one parent, guardian or adult family member of the minor; or

B. An order issued by the Probate Court or District Court pursuant to subsection 2 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(1) To the minor majority rights for the sole purpose of consenting to the procedure; or

2 (2) To the minor consent to the procedure, when the
3 court has given its informed written consent and the
4 minor is having the procedure willingly.

6 2. Court order. The court may issue an order for the
7 purpose of consenting to a procedure under this subchapter for a
8 minor under the following circumstances and according to the
9 following procedures.

10 A. The minor or next friend of the minor for the purposes
11 of filing a petition may make an application to the Probate
12 Court or District Court, which shall assist the minor or
13 next friend in preparing the petition. The minor or the
14 next friend of the minor shall file a petition setting forth:

15 (1) The initials of the minor;

16 (2) The age of the minor;

17 (3) That the minor has been fully informed of the
18 risks and consequences of the procedure;

19 (4) That the minor is of sound mind and has sufficient
20 intellectual capacity to consent to the procedure;

21 (5) That, if the court does not grant the minor
22 majority rights for the purpose of consent to the
23 procedure, the court should find that the procedure is
24 in the best interest of the minor and give judicial
25 consent to the procedure; and

26 (6) That, if the minor does not have private counsel,
27 that the court may appoint counsel.

28 The minor or the next friend shall sign the petition.

29 B. The petition under paragraph A confidential record, and
30 the court files on the petition must be impounded.

31 C. A hearing on the merits of the petition must be held as
32 soon as possible, but no later than 2 days after filing of
33 the petition. If any party is unable to afford counsel, the
34 court shall appoint counsel. At the hearing, the court
35 shall hear evidence relating to:

36 (1) The emotional development, maturity, intellect and
37 understanding of the minor;

38 (2) The nature, possible consequences and alternatives
39 to the procedure; and

2 (3) Any other evidence that the court may find useful
4 in determining whether the minor should be granted
6 majority rights for the purpose of consenting to the
 procedure or whether the procedure is in the best
 interest of the minor.

8 The court shall conduct the hearing in private with only the
10 minor, interested parties as determined by the court and
 necessary court officers or personnel present. The record
12 of the hearing is not a public record.

14 D. In the decree resulting from the hearing under paragraph
 C, the court shall for good cause:

16 (1) Grant the petition for majority rights for the
18 sole purpose of consenting to the procedure;

20 (2) Find the procedure to be in the best interest of
 the minor and give judicial consent to the procedure,
22 setting forth the grounds for the finding; or

24 (3) Deny the petition only if the court finds that the
 minor is not mature enough to make her own decision and
26 that the procedure is not in her best interest.

28 E. If the petition under paragraph A is allowed, the
30 informed consent of the minor, pursuant to a court grant of
 majority rights or the judicial consent, bars an action by
32 the parent or guardian of the minor on the grounds of
 battery of the minor by the pharmacist performing the
34 procedure. The immunity granted extends only to the
 performance of the procedure and any necessary accompanying
 services that are performed in a competent manner.

36 F. The minor may appeal an order issued in accordance with
38 this section to the Superior Court. The notice of appeal
40 must be filed within 24 hours from the date of issuance of
 the order. The Supreme Judicial Court shall, by court rule,
42 provide for expedited appellate review of cases appealed
 under this section.

44 3. **Presumption of validity of informed written consent;**
46 rebuttal. An informed consent that is evidenced in writing and
 that is signed by the minor and one parent, guardian or adult
48 family member of the minor is presumed to be a valid informed
 consent. This presumption is subject to rebuttal only upon proof
 that the informed consent was obtained through fraud, deception
 or misrepresentation of material fact.

2 For purposes of this section, "minor" means a person who is
3 under 18 years of age.'


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5 Further amend the bill in section 1 in that part designated
6 "~~§13825.~~" in the first line (page 1, line 45 in L.D.) by striking
7 out the following: "~~§13825.~~" and inserting in its place the
8 following: '~~§13826.~~'

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SUMMARY

13 This amendment requires a pharmacist, prior to initiating
14 emergency contraceptive drug therapy on a minor, to obtain the
15 informed written consent of the minor and one parent, guardian or
16 adult family member of the minor or a court order. This
17 provision is similar to that required before a minor may obtain
18 an abortion. This amendment also corrects a reference in the
19 bill.

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22 SPONSORED BY: 
23 (Senator BLAIS)

24

25 COUNTY: Kennebec

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FISCAL NOTE REQUIRED
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1152

**An Act to Authorize Collaborative Practice for Emergency
Contraception**

LR 0683(04)

Fiscal Note for Senate Amendment "A" 8-379

Sponsor: Senator Blais

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements:

This bill may increase the number of civil suits filed in the court system.