

Assembly Constitutional Amendment

No. 5

Introduced by Assembly Member Grove

January 28, 2013

Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 32 to Article I thereof, relating to abortion.

LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as introduced, Grove. Abortion: parental notification.

The California Constitution establishes a right of privacy. Existing statutory law, the Reproductive Privacy Act, contains provisions regulating abortions, including a requirement that the procedure be performed by a physician and surgeon. The act prohibits the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or if the abortion is necessary to protect the life or health of the woman.

This measure, which would be known as the Parental Notification, Child and Teen Safety, Stop Predators Act, would prohibit a physician and surgeon from performing an abortion on an unemancipated minor, as defined, unless the physician and surgeon or his or her agent has delivered written notice to the parent of the unemancipated minor, or until a waiver of that notice has been received from the parent or issued by a court pursuant to a prescribed process. The measure would require the physician and surgeon performing an abortion on an unemancipated minor to report specified information to State Department of Public Health and would require the department to compile an annual statistical

report with that information. The measure would impose civil and criminal liability for violation of this measure, as specified.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2013–14 Regular
3 Session, commencing on the third day of December 2012,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California, that the
6 Constitution of the State be amended as follows:

7 First—This act shall be known and may be cited as the Parental
8 Notification, Child and Teen Safety, and Stop Predators Act.

9 Second—The people of the State of California find and declare
10 that they have a compelling interest in both of the following:

11 (a) Protecting minors from the known risks of secret abortions,
12 including the danger of not obtaining prompt care for health- and
13 life-threatening complications when a minor’s parent is unaware
14 that she has undergone a secret abortion.

15 (b) Preventing sexual predators from using secret abortions to
16 conceal the sexual exploitation of minors.

17 Third—That Section 32 is added to Article I thereof, to read:

18 SEC. 32. (a) For purposes of this section, the following
19 definitions shall apply:

20 (1) “Abortion” means the use of any means to terminate the
21 pregnancy of an unemancipated minor known to be pregnant,
22 except for the purpose of producing a live birth. “Abortion” shall
23 not include the use of any contraceptive drug or device.

24 (2) “Medical emergency” means a condition that, on the basis
25 of the physician’s good-faith clinical judgment, so complicates
26 the medical condition of a pregnant unemancipated minor as to
27 necessitate the immediate abortion of her pregnancy to avert her
28 death or for which a delay will create serious risk of substantial
29 and irreversible impairment of a major bodily function.

30 (3) “Notice” means a written notification, signed and dated by
31 a physician or his or her agent, informing the parent of an
32 unemancipated minor that she has requested an abortion.

33 (4) “Parent” means a person who, at the time notice or waiver
34 is required under this section, is a parent if both parents have legal

1 custody, the parent or person having legal custody, or the legal
2 guardian of an unemancipated minor.

3 (5) “Physician” means a person authorized under the statutes
4 and regulations of the State of California to perform an abortion
5 upon an unemancipated minor.

6 (6) “Unemancipated minor” means a female under 18 years of
7 age who has not entered into a valid marriage, is not on active duty
8 with the Armed Services of the United States, or has not received
9 a declaration of emancipation under state law. For the purposes of
10 this section, pregnancy does not emancipate a female under the
11 age of 18 years.

12 (b) Notwithstanding any provision of this Constitution to the
13 contrary, and except as provided in subdivision (d), (e), or (f), a
14 physician shall not perform an abortion on an unemancipated minor
15 until after the physician or the physician’s agent has delivered
16 written notice, as provided in subdivision (c), or has received a
17 copy of a waiver of parental notice from the court as authorized
18 in subdivision (g). A copy of a notice or waiver shall be retained
19 with the unemancipated minor’s medical records. The physician
20 or the physician’s agent shall inform the unemancipated minor
21 that her parent may receive notice as provided for in this section.

22 (c) The written notice shall be delivered by the physician or the
23 physician’s agent to the parent, either personally or by certified
24 mail addressed to the parent at the parent’s last known address
25 with return receipt requested and restricted delivery to the
26 addressee. If notice is provided by certified mail, a copy of the
27 written notice shall also be sent at the same time by first-class mail
28 to the parent. Notice by mail may be presumed to have been
29 delivered under this subdivision at noon of the second day after
30 the written notice sent by certified mail was postmarked, not
31 counting any days on which regular mail delivery does not take
32 place. A form for the notice shall be prescribed by the State
33 Department of Public Health. The notice form shall be bilingual,
34 in English and Spanish, and also available in English and each of
35 the other languages in which California Official Voter Information
36 Guides are published.

37 (d) Notice of an unemancipated minor’s intent to obtain an
38 abortion may be waived by her parent. The waiver must be in
39 writing on a form prescribed by the State Department of Public
40 Health, signed by a parent, dated, and notarized. The parent shall

1 specify on the form that the waiver is valid for 30 days, or until a
2 specified date, or until the minor's 18th birthday. The written
3 waiver need not be notarized if the parent personally delivers it to
4 the physician or the physician's agent. The form shall include the
5 following statement: "WARNING. It is a crime to knowingly
6 provide false information to a physician or a physician's agent for
7 the purpose of inducing a physician or a physician's agent to
8 believe that a waiver of notice has been provided by a parent or
9 guardian." The waiver form shall be bilingual, in English and
10 Spanish, and shall also be available in English and each of the
11 other languages in which California Official Voter Information
12 Guides are published. For each abortion performed on an
13 unemancipated minor, the physician or the physician's agent must
14 receive a separate original written waiver that shall be retained
15 with the unemancipated minor's medical records.

16 (e) Notice shall not be required under this section if the
17 unemancipated minor is the victim of physical or sexual abuse
18 committed by one or both of the minor's parents and the abuse is
19 documented by a signed and notarized statement by (1) a person
20 at least 21 years of age who has personal knowledge of the abuse
21 and who is a grandparent, stepparent, foster parent, sibling of a
22 parent, or sibling or half-sibling of the unemancipated minor, or
23 (2) a law enforcement officer or agent of a public child protective
24 agency who has investigated the abuse of the unemancipated minor.
25 The physician shall retain the signed and notarized statement with
26 the unemancipated minor's medical records.

27 (f) Notice shall not be required under this section if the attending
28 physician certifies in the unemancipated minor's medical records
29 the medical indications supporting the physician's good-faith
30 clinical judgment that the abortion is necessary due to a medical
31 emergency.

32 (g) (1) Notice shall not be required under this section if a waiver
33 of parental notice is authorized under this subdivision. If the
34 pregnant unemancipated minor elects not to permit notice to be
35 given to a parent, she may file a petition with the juvenile court.
36 No filing fee shall be required for filing a petition. If an
37 unemancipated minor seeks to file a petition, the court shall assist
38 the unemancipated minor or person designated by the
39 unemancipated minor in preparing the documents required. The
40 petition shall set forth with specificity the unemancipated minor's

1 reasons for the request. The unemancipated minor shall appear
2 personally in the proceedings in juvenile court and may appear on
3 her own behalf or with counsel of her own choosing. The court
4 shall, however, advise her that she has a right to court-appointed
5 counsel upon request. The hearing shall be held by 5 p.m. on the
6 second court day after filing the petition unless extended at the
7 written request of the unemancipated minor or her counsel. The
8 unemancipated minor shall be notified of the date, time, and place
9 of the hearing on the petition. Judgment shall be entered within
10 one court day of submission of the matter. The judge shall order
11 a record of the evidence to be maintained, including the judge's
12 written factual findings and legal conclusions supporting the
13 decision. The court shall ensure that the minor's identity is kept
14 confidential and that all court proceedings are sealed.

15 (2) (A) If the judge finds, by clear and convincing evidence,
16 that the unemancipated minor is both sufficiently mature and
17 well-informed to decide whether to have an abortion, the judge
18 shall authorize a waiver of parental notice.

19 (B) If the judge finds, by clear and convincing evidence, that
20 parental notice is not in the best interests of the unemancipated
21 minor, the judge shall authorize a waiver of parental notice. If the
22 finding that parental notice is not in the best interests of the minor
23 is based on evidence of physical or sexual abuse, the court shall
24 ensure that the evidence is brought to the attention of the
25 appropriate law enforcement or public child protective agency.

26 (C) If the judge does not make a finding specified in
27 subparagraph (A) or (B), the judge shall deny the petition.

28 (3) If the judge fails to rule within the time period specified in
29 paragraph (1) and no extension was requested and granted, the
30 petition shall be deemed granted and a waiver of parental notice
31 is authorized.

32 (4) The unemancipated minor may appeal the denial of her
33 petition by the juvenile court at any time after the entry of
34 judgment. The Judicial Council shall prescribe, by rule, the practice
35 and procedure on appeal and the time and manner in which a record
36 on appeal shall be prepared and filed and may prescribe forms for
37 these proceedings. These procedures shall require that the hearing
38 shall be held within three court days of filing the notice of appeal.
39 The unemancipated minor shall be notified of the date, time, and
40 place of the hearing. The appellate court shall ensure that the

1 unemancipated minor's identity is kept confidential and that all
2 court proceedings are sealed. No filing fee shall be required for
3 filing an appeal. Judgment on appeal shall be entered within one
4 court day of submission of the matter.

5 (5) The Judicial Council shall prescribe, by rule, the practice
6 and procedure for petitions for waiver of parental notification,
7 hearings, and entry of judgment as it deems necessary, and may
8 prescribe forms for these proceedings. Each court shall provide
9 annually to the Judicial Council, in a manner to be prescribed by
10 the Judicial Council to ensure confidentiality of the unemancipated
11 minors who have filed petitions, a report of the number of petitions
12 filed, the number of petitions granted under subparagraphs (A)
13 and (B) of paragraph (2), deemed granted under paragraph (3),
14 denied under subparagraph (C) of paragraph (2), and granted or
15 denied under paragraph (4). These reports shall be publicly
16 available, unless the Judicial Council determines that the data
17 contained in individual reports should be aggregated by county
18 before being made available to the public, in order to preserve the
19 confidentiality of the unemancipated minors who have filed
20 petitions.

21 (h) The State Department of Public Health shall prescribe forms
22 for the reporting of abortions performed on unemancipated minors
23 by physicians. The report forms shall not identify the
24 unemancipated minor or her parents by name or request any other
25 information by which the unemancipated minor or her parents
26 might be identified. The forms shall include the date of the
27 procedure, the unemancipated minor's month and year of birth,
28 the duration of the pregnancy, the type of abortion procedure, the
29 numbers of the unemancipated minor's previous abortions and
30 deliveries, if known, and the facility where the abortion was
31 performed. The forms shall also indicate whether notice was given
32 pursuant to subdivision (c) or was not required or waived pursuant
33 to subdivision (d), (e), (f), or (g), delineated by subdivision.

34 (i) A physician who performs an abortion on an unemancipated
35 minor shall, within one month, file a dated and signed report
36 concerning that abortion with the State Department of Public
37 Health on forms prescribed pursuant to subdivision (h). The identity
38 of the physician shall be kept confidential and shall not be subject
39 to disclosure under the California Public Records Act (Chapter

1 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
2 the Government Code) or any successor to that act.

3 (j) A claim shall not be paid by the Medi-Cal program or any
4 other program paid for or subsidized by the State of California for
5 any medical services relating to the provision of an abortion to a
6 minor under 18 years of age at the time of the abortion, unless the
7 claim for payment is accompanied by a copy of the report filed
8 with the State Department of Public Health pursuant to subdivision
9 (i), or proof that the minor was not unemancipated.

10 (k) The State Department of Public Health shall compile an
11 annual statistical report from the information submitted pursuant
12 to subdivision (i). The annual report shall not include the identity
13 of a physician who filed a report required by subdivision (i). The
14 compilation shall include statistical information on the numbers
15 of abortions by month and by county where performed, the minors'
16 ages, the duration of the pregnancies, the types of abortion
17 procedures, the numbers of prior abortions or deliveries, where
18 known, and the numbers of abortions performed for which notice
19 was given pursuant to subdivision (c) or was not required or waived
20 pursuant to subdivision (d), (e), (f), or (g), delineated by
21 subdivision. The annual statistical report shall be made available
22 to county public health officials, members of the Legislature, the
23 Governor, and the public.

24 (l) A person who performs an abortion on an unemancipated
25 minor and in so doing knowingly or negligently fails to comply
26 with this section shall be liable for damages in a civil action
27 brought by the unemancipated minor, her legal representative, or
28 by a parent wrongfully denied notification. The time for
29 commencement of the action shall be within four years of the date
30 the unemancipated minor attains majority or four years of the date
31 a parent wrongfully denied notification discovers or reasonably
32 should have discovered the failure to comply with this section,
33 whichever period expires later. However, an action may not be
34 commenced more than 12 years after the abortion occurred. A
35 person shall not be liable under this section if he or she establishes,
36 by written or documentary evidence, that he or she relied upon
37 evidence sufficient to convince a careful and prudent person that
38 the representations of the unemancipated minor or other persons
39 regarding information necessary to comply with this section were
40 bona fide and true. At any time prior to the rendering of a final

1 judgment in an action brought under this subdivision, the plaintiff
2 may elect to recover, in lieu of actual damages, an award of
3 statutory damages in the amount of ten thousand dollars (\$10,000).
4 In addition to any damages awarded under this subdivision, the
5 plaintiff shall be entitled to an award of reasonable attorney fees.
6 This section shall not abrogate, limit, or restrict the common law
7 rights of parents, or any right to relief under any theory of liability
8 that any person or any state or local agency may have under any
9 statute or common law for injury or damage, including any legal,
10 equitable, or administrative remedy under federal or state law,
11 against a party, with respect to injury to an unemancipated minor
12 from an abortion.

13 (m) Other than an unemancipated minor who is the patient of
14 a physician, or the physician or the physician's agent, any person
15 who knowingly provides false information to a physician or a
16 physician's agent for the purpose of inducing the physician or the
17 physician's agent to believe that notice has been or will be
18 delivered to a parent pursuant to this section, or that a waiver of
19 notice has been obtained, or that an unemancipated minor is the
20 victim of physical or sexual abuse, or that an unemancipated minor
21 patient is not an unemancipated minor, is guilty of a misdemeanor
22 punishable by a fine of up to ten thousand dollars (\$10,000).

23 (n) Notwithstanding any notice or waivers of notice, except
24 where the particular circumstances of a medical emergency or the
25 minor's own lack of legal mental capacity precludes obtaining her
26 informed consent, a physician shall not perform or induce an
27 abortion upon an unemancipated minor except with the informed
28 consent of the unemancipated minor herself.

29 (o) Notwithstanding any notice or waivers of notice, an
30 unemancipated minor who is being coerced through force, threat
31 of force, or threatened or actual deprivation of food or shelter to
32 consent to undergo an abortion may apply to the juvenile court for
33 relief. The court shall give the matter expedited consideration and
34 grant this relief as may be necessary to prevent the coercion.

35 (p) Except for the rights, duties, privileges, conditions, and
36 limitations specifically provided for in this section, this section
37 shall not be construed to grant, secure, or deny any other rights,
38 duties, privileges, conditions, and limitations relating to abortion
39 or the funding thereof.

1 Fourth—If one or more provisions, subdivisions, sentences,
2 clauses, phrases, or words of this section, or the application thereof,
3 to any person or circumstance is found to be unconstitutional or
4 invalid, the same is hereby declared to be severable and the balance
5 of this section shall remain effective, notwithstanding the
6 unconstitutionality or invalidity. Each provision, subdivision,
7 sentence, clause, phrase, or word of this section would have been
8 approved by voters irrespective of the fact that one or more
9 provisions, subdivisions, sentences, clauses, phrases, or words
10 might be declared unconstitutional or invalid.

11 Fifth—This act shall become operative 90 days after the election
12 in which it is approved. The Judicial Council and the State
13 Department of Public Health shall, within these 90 days, prescribe
14 rules, practices, and procedures and prepare and make available
15 any required forms.