

SENATE BILL NO. 179—SENATORS CANCELA, RATTI, SCHEIBLE;
ATKINSON, BROOKS, CANNIZZARO, DONDERO LOOP,
HARRIS, OHRENSCHALL, PARKS, SPEARMAN AND
WOODHOUSE

FEBRUARY 18, 2019

JOINT SPONSORS: ASSEMBLYMEN SPIEGEL, SPRINKLE, BILBRAY-
AXELROD, PETERS, NGUYEN; ASSEFA, DURAN, FUMO,
GORELOW, JAUREGUI, MARTINEZ, MCCURDY, MILLER,
MUNK, THOMPSON AND WATTS

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to abortions.
(BDR 40-567)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to abortions; revising provisions relating to informed consent to an abortion; repealing criminal penalties on certain actions relating to the termination of a pregnancy or concealing birth; repealing the prohibition on the excusal of a person on certain grounds from testifying as a witness in a prosecution relating to the termination of a pregnancy; repealing parental notification requirements for abortions performed upon pregnant minors; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law in NRS 442.250 regulates the medical conditions under which
2 abortions may be performed in this State. Because NRS 442.250 was submitted to
3 and approved by a referendum of the voters at the 1990 general election, Section 1
4 of Article 19 of the Nevada Constitution dictates that the provisions of NRS
5 442.250 may not be amended, annulled, repealed, set aside, suspended or in any
6 way made inoperative except by the direct vote of the people. In addition to the
7 provisions of NRS 442.250, Nevada's abortion laws contain certain parental



8 notification requirements that apply only to abortions performed upon pregnant
9 minors. (NRS 442.255, 442.2555, 442.268) Nevada's abortion laws also contain
10 certain requirements for informed consent to an abortion. (NRS 442.253) Because
11 the parental notification requirements and the requirements concerning informed
12 consent were not part of the referendum in 1990, they may be amended or repealed
13 by the Legislature without being approved by the direct vote of the people.

14 This bill repeals the existing parental notification requirements for pregnant
15 minors and revises the requirements in existing law relating to informed consent.
16 This bill conforms with Section 1 of Article 19 of the Nevada Constitution because
17 this bill does not amend, annul, repeal, set aside, suspend or in any way make
18 inoperative the provisions of NRS 442.250. Instead, this bill serves a different
19 governmental purpose than the provisions of NRS 442.250 and revises laws that are
20 separate and complete by themselves and are not amendatory of the provisions of
21 NRS 442.250. (*Matthews v. State ex rel. Nev. Tax Comm'n*, 83 Nev. 266, 267-69
22 (1967))

23 In 1985, the Legislature enacted the existing parental notification requirements
24 for pregnant minors which prohibit a physician, with certain exceptions, from
25 knowingly performing an abortion upon a pregnant minor unless: (1) a custodial
26 parent or guardian of the minor is notified in the statutorily-prescribed manner
27 before the abortion; or (2) upon the request of the minor, the district court
28 authorizes the abortion without parental notification when the minor meets certain
29 criteria. (Chapter 681, Statutes of Nevada 1985, pp. 2306-09 (codified in NRS
30 442.255, 442.2555, 442.268)) Before the requirements became effective in 1985,
31 Nevada's federal district court enjoined their implementation on the grounds that
32 they unconstitutionally burden a woman's fundamental right to make the highly
33 personal choice of whether to have an abortion, thereby violating the woman's
34 interests in personal liberty protected by the Due Process Clause of the Fourteenth
35 Amendment to the United States Constitution. (*Glick v. McKay*, 616 F. Supp. 322,
36 323-28 (D. Nev. 1985))

37 In 1991, the United States Court of Appeals for the Ninth Circuit affirmed the
38 federal district court's decision in *Glick v. McKay*, 937 F.2d 434, 437-42 (9th Cir.
39 1991). The Ninth Circuit relied upon two reasons for invalidating Nevada's existing
40 parental notification requirements: (1) the requirements impermissibly narrowed
41 the criteria under which the district court could give judicial authorization for an
42 abortion without parental notification when the abortion would be in the minor's
43 best interests; and (2) the requirements did not place any time limit on the period
44 within which the district court must rule upon a request for judicial authorization
45 and therefore they did not facially ensure that the minor's interests would be
46 protected by the expedited judicial review. (*Glick v. McKay*, 937 F.2d 434, 437-42
47 (9th Cir. 1991))

48 In 1997, when the United States Supreme Court reversed a different Ninth
49 Circuit decision that struck down Montana's parental notification requirements, the
50 United States Supreme Court disapproved the first reason relied upon by the Ninth
51 Circuit in the *Glick* decision to strike down Nevada's parental notification
52 requirements. (*Lambert v. Wicklund*, 520 U.S. 292, 294-99 (1997)) However, the
53 United States Supreme Court did not address the second reason relied upon by the
54 Ninth Circuit in the *Glick* decision to strike down Nevada's parental notification
55 requirements. As a result, based upon the second reason, the Ninth Circuit's *Glick*
56 decision is still in effect in Nevada, which means that Nevada's existing parental
57 notification requirements remain unconstitutional because they do not place any
58 time limit on the period within which the district court must rule upon a request for
59 judicial authorization and therefore they do not facially ensure that the minor's
60 interests will be protected by expedited judicial review. (*Glick v. McKay*, 937 F.2d
61 434, 440-42 (9th Cir. 1991); *Planned Parenthood of S. Ariz. v. Lawall (Lawall I)*,
62 180 F.3d 1022, 1029 n.9 (9th Cir. 1999) ("Nothing in *Wicklund*, however, affects



63 *Glick's* holding regarding [the failure of Nevada's law to facially comply with
64 *Bellotti II's* expediency requirement."], amended on *denial of reh'g*, 193 F.3d 1042,
65 1043 (9th Cir. 1999)) **Section 6** of this bill repeals Nevada's existing parental
66 notification requirements. **Sections 3 and 4** of this bill make conforming changes.

67 Existing law requires a physician to certify in writing that a woman gave her
68 informed written consent before performing an abortion in this State. Existing law
69 additionally requires a physician to certify in writing the pregnant woman's marital
70 status and age before performing an abortion. (NRS 442.252) Existing law further
71 requires that an attending physician or a person meeting the qualifications adopted
72 by the Division of Public and Behavioral Health of the Department of Health and
73 Human Services: (1) take certain action to notify a pregnant woman that she is
74 pregnant; (2) inform a pregnant woman of the number of weeks which have elapsed
75 from the probable time of conception; and (3) explain the physical and emotional
76 implications of having the abortion. (NRS 442.253)

77 **Sections 1 and 2** of this bill revise the requirements for informed consent for
78 an abortion. **Section 1** removes the requirement that a physician certify a pregnant
79 woman's marital status and age before performing an abortion. **Section 1** also
80 removes the requirement that a physician certify in writing that a woman gave her
81 informed written consent. **Section 2** requires an attending physician or a person
82 meeting the qualifications adopted by the Division to explain orally to a pregnant
83 woman in an accurate and thorough manner: (1) the procedure to be used and the
84 proper procedures for her care after the abortion; (2) the discomforts and risks that
85 may accompany or follow the performance of a procedure; and (3) if an interpreter
86 is available to assist the woman because the woman does not understand the
87 language used on a form indicating consent or the language used by the persons
88 providing her with information concerning the procedure, that an interpreter is
89 available to provide the explanation. **Section 2** also requires an attending physician
90 or a person meeting the qualifications adopted by the Division to: (1) offer to
91 answer any questions the woman has concerning the procedure; and (2) provide the
92 woman with a copy of a form indicating consent. **Section 2** provides that informed
93 consent shall be deemed to have been given by a woman seeking an abortion when:
94 (1) the form indicating consent has been signed and dated by certain persons; and
95 (2) if the form indicating consent is not written in a language understood by the
96 pregnant woman, the person who explains certain information to the pregnant
97 woman certifies that the information has been presented in such a manner as to be
98 understood by the woman.

99 Existing law criminalizes certain actions relating to the termination of a
100 pregnancy and concealing birth and prohibits a person from being excused from
101 testifying as a witness in any prosecution relating to the termination of a pregnancy
102 on the grounds that the testimony would tend to incriminate the person. (NRS
103 201.120-201.150) **Section 6** repeals these provisions.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 442.252 is hereby amended to read as follows:
2 442.252 No physician may perform an abortion in this state
3 unless, before the physician performs it, he or she ~~certifies in~~
4 ~~writing that~~ obtains the ~~woman gave her~~ informed ~~written~~
5 consent ~~freely and without coercion. The physician shall further~~
6 ~~certify in writing the pregnant woman's marital status and age based~~



1 ~~upon proof of age offered by her.] of the woman seeking the~~
2 ~~abortion pursuant to NRS 442.253.~~

3 **Sec. 2.** NRS 442.253 is hereby amended to read as follows:

4 442.253 1. The attending physician or a person meeting the
5 qualifications established by regulations adopted by the Division
6 shall ~~[accurately and in a]~~ :

7 *(a) In an accurate and thorough* manner which is reasonably
8 likely to be understood by the pregnant woman ~~[-~~

9 ~~—(a) Explain that, in his or her professional judgment, she is~~
10 ~~pregnant and a copy of her pregnancy test is available to her.~~

11 ~~—(b) Inform her of the number of weeks which have elapsed from~~
12 ~~the probable time of conception.~~

13 ~~—(c) Explain the physical and emotional implications of having~~
14 ~~the abortion.~~

15 ~~—(d) Describe the medical], explain orally:~~

16 *(1) The* procedure to be used ~~[-its consequences]~~ and the
17 proper procedures for her care after the abortion.

18 *(2) The discomforts and risks that may accompany or*
19 *follow the procedure.*

20 *(3) If an interpreter is available to assist the woman*
21 *because the woman does not understand the language used on a*
22 *form indicating consent or the language used by the attending*
23 *physician or person meeting the qualifications established by*
24 *regulations adopted by the Division, that an interpreter is available*
25 *to provide the explanation.*

26 *(b) Offer to answer any questions the woman has concerning*
27 *the procedure.*

28 *(c) Provide the woman with a copy of a form indicating*
29 *consent.*

30 2. ~~[The attending physician shall verify that all material facts~~
31 ~~and information, which in the professional judgment of the~~
32 ~~physician are necessary to allow the woman to give her informed~~
33 ~~consent, have been provided to her and that her consent is~~
34 ~~informed.] *The form indicating consent provided pursuant to*~~
35 ~~subsection 1 must clearly describe the nature and consequences of~~
36 ~~the procedure to be used.~~

37 3. ~~[If the woman does not understand English, the form~~
38 ~~indicating consent must be written in a language understood by her,~~
39 ~~or the attending physician shall certify on the form that the~~
40 ~~information required to be given has been presented in such a~~
41 ~~manner as to be understandable by her. If an interpreter is used, the~~
42 ~~interpreter must be named and reference to this use must be made on~~
43 ~~the form for] *Informed* consent [-] *shall be deemed to have been*~~
44 ~~given by a woman seeking an abortion for the purposes of NRS~~
45 ~~442.252 when:~~



1 (a) *The form indicating consent provided pursuant to*
2 *paragraph (c) of subsection 1 has been signed and dated by:*

- 3 (1) *The woman;*
4 (2) *The interpreter, if an interpreter is used;*
5 (3) *The attending physician who will perform the*
6 *procedure; and*

7 (4) *The person meeting the qualifications established by*
8 *regulations adopted by the Division if such a person performs the*
9 *duties prescribed in subsection 1; and*

10 (b) *If the form indicating consent is not written in a language*
11 *understood by the woman, the person who performs the duties*
12 *prescribed in subsection 1 has certified on the form that the*
13 *information described in subsection 1 has been presented in such*
14 *a manner as to be understood by the woman.*

15 **Sec. 3.** NRS 442.256 is hereby amended to read as follows:

16 442.256 A physician who performs an abortion shall maintain
17 a record of it for at least 5 years after it is performed. The record
18 must contain:

19 1. The ~~{written}~~ *form indicating* consent ~~{of the woman;}~~
20 *completed in compliance with subsection 3 of NRS 442.253.*

21 2. A statement of the information which was provided to the
22 woman pursuant to NRS 442.253 . ~~{; and~~

23 ~~—3. A description of efforts to give any notice required by~~
24 ~~NRS 442.255.}~~

25 **Sec. 4.** NRS 3.223 is hereby amended to read as follows:

26 3.223 1. Except if the child involved is subject to the
27 jurisdiction of an Indian tribe pursuant to the Indian Child Welfare
28 Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in
29 which it is established, the family court has original, exclusive
30 jurisdiction in any proceeding:

31 (a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125,
32 125A, 125B, 125C, 126, 127, 128, 129, 130, 159A, 425 or 432B of
33 NRS, except to the extent that a specific statute authorizes the use of
34 any other judicial or administrative procedure to facilitate the
35 collection of an obligation for support.

36 (b) ~~{Brought pursuant to NRS 442.255 and 442.2555 to request~~
37 ~~the court to issue an order authorizing an abortion.~~

38 ~~{(e)}~~ For judicial approval of the marriage of a minor.

39 ~~{(d)}~~ (c) Otherwise within the jurisdiction of the juvenile court.

40 ~~{(e)}~~ (d) To establish the date of birth, place of birth or parentage
41 of a minor.

42 ~~{(f)}~~ (e) To change the name of a minor.

43 ~~{(g)}~~ (f) For a judicial declaration of the sanity of a minor.

44 ~~{(h)}~~ (g) To approve the withholding or withdrawal of life-
45 sustaining procedures from a person as authorized by law.



1 ~~(h)~~ **(h)** Brought pursuant to NRS 433A.200 to 433A.330,
2 inclusive, for an involuntary court-ordered admission to a mental
3 health facility.

4 ~~(i)~~ **(i)** Brought pursuant to NRS 441A.510 to 441A.720,
5 inclusive, for an involuntary court-ordered isolation or quarantine.

6 2. The family court, where established and, except as otherwise
7 provided in paragraph (m) of subsection 1 of NRS 4.370, the justice
8 court have concurrent jurisdiction over actions for the issuance of a
9 temporary or extended order for protection against domestic
10 violence.

11 3. The family court, where established, and the district court
12 have concurrent jurisdiction over any action for damages brought
13 pursuant to NRS 41.134 by a person who suffered injury as the
14 proximate result of an act that constitutes domestic violence.

15 **Sec. 5.** NRS 41A.110 is hereby amended to read as follows:

16 41A.110 ~~(A)~~ ***Except as otherwise provided in subsection 3 of***
17 ***NRS 442.253, a*** physician licensed to practice medicine under the
18 provisions of chapter 630 or 633 of NRS, or a dentist licensed to
19 practice dentistry under the provisions of chapter 631 of NRS, has
20 conclusively obtained the consent of a patient for a medical, surgical
21 or dental procedure, as appropriate, if the physician or dentist has
22 done the following:

23 1. Explained to the patient in general terms, without specific
24 details, the procedure to be undertaken;

25 2. Explained to the patient alternative methods of treatment, if
26 any, and their general nature;

27 3. Explained to the patient that there may be risks, together
28 with the general nature and extent of the risks involved, without
29 enumerating such risks; and

30 4. Obtained the signature of the patient to a statement
31 containing an explanation of the procedure, alternative methods of
32 treatment and risks involved, as provided in this section.

33 **Sec. 6.** NRS 201.120, 201.130, 201.140, 201.150, 442.255,
34 442.2555 and 442.268 are hereby repealed.

35 **Sec. 7.** This act becomes effective on July 1, 2019.

TEXT OF REPEALED SECTIONS

201.120 Abortion: Definition; penalty. A person who:

1. Prescribes, supplies or administers to a woman, whether pregnant or not, or advises or causes her to take any medicine, drug or substance; or



2. Uses or causes to be used, any instrument or other means, to terminate a pregnancy, unless done pursuant to the provisions of NRS 442.250, or by a woman upon herself upon the advice of a physician acting pursuant to the provisions of NRS 442.250, is guilty of abortion which is a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

201.130 Selling drugs to produce miscarriage; penalty. Every person who shall manufacture, sell or give away any instrument, drug, medicine or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor.

201.140 Evidence. In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that the testimony would tend to incriminate him or her, but such testimony shall not be used against the person testifying in any criminal prosecution except for perjury in giving such testimony.

201.150 Concealing birth; penalty. Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor.

442.255 Notice to custodial parent or guardian; request for authorization for abortion; rules of civil procedure inapplicable.

1. Unless in the judgment of the attending physician an abortion is immediately necessary to preserve the patient's life or health or an abortion is authorized pursuant to subsection 2 or NRS 442.2555, a physician shall not knowingly perform or induce an abortion upon an unmarried and unemancipated woman who is under the age of 18 years unless a custodial parent or guardian of the woman is personally notified before the abortion. If the custodial parent or guardian cannot be so notified after a reasonable effort, the physician shall delay performing the abortion until the physician has notified the parent or guardian by certified mail at the last known address of the parent or guardian.

2. An unmarried or unemancipated woman who is under the age of 18 years may request a district court to issue an order authorizing an abortion. If so requested, the court shall interview the woman at the earliest practicable time, which must be not more than 2 judicial days after the request is made. If the court determines, from any information provided by the woman and any other evidence that the court may require, that:

(a) She is mature enough to make an intelligent and informed decision concerning the abortion;



(b) She is financially independent or is emancipated; or

(c) The notice required by subsection 1 would be detrimental to her best interests,

↳ the court shall issue an order within 1 judicial day after the interview authorizing a physician to perform the abortion in accordance with the provisions of NRS 442.240 to 442.270, inclusive.

3. If the court does not find sufficient grounds to authorize a physician to perform the abortion, it shall enter an order to that effect within 1 judicial day after the interview. If the court does not enter an order either authorizing or denying the performance of the abortion within 1 judicial day after the interview, authorization shall be deemed to have been granted.

4. The court shall take the necessary steps to ensure that the interview and any other proceedings held pursuant to this subsection or NRS 442.2555 are confidential. The rules of civil procedure do not apply to any action taken pursuant to this subsection.

442.2555 Procedure if district court denies request for authorization for abortion: Petition; hearing on merits; appeal.

1. If the order is denied pursuant to NRS 442.255, the court shall, upon request by the minor if it appears that she is unable to employ counsel, appoint an attorney to represent her in the preparation of a petition, a hearing on the merits of the petition, and on an appeal, if necessary. The compensation and expenses of the attorney are a charge against the county as provided in the following schedule:

(a) For consultation, research and other time reasonably spent on the matter, except court appearances, \$20 per hour.

(b) For court appearances, \$30 per hour.

2. The petition must set forth the initials of the minor, the age of the minor, the estimated number of weeks elapsed from the probable time of conception, and whether maturity, emancipation, notification detrimental to the minor's best interests or a combination thereof are relied upon in avoidance of the notification required by NRS 442.255. The petition must be initialed by the minor.

3. A hearing on the merits of the petition, on the record, must be held as soon as possible and within 5 judicial days after the filing of the petition. At the hearing the court shall hear evidence relating to:

(a) The minor's emotional development, maturity, intellect and understanding;

(b) The minor's degree of financial independence and degree of emancipation from parental authority;



(c) The minor's best interests relative to parental involvement in the decision whether to undergo an abortion; and

(d) Any other evidence that the court may find useful in determining whether the minor is entitled to avoid parental notification.

4. In the decree, the court shall, for good cause:

(a) Grant the petition, and give judicial authorization to permit a physician to perform an abortion without the notification required in NRS 442.255; or

(b) Deny the petition, setting forth the grounds on which the petition is denied.

5. An appeal from an order issued under subsection 4 may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, which shall suspend the Nevada Rules of Appellate Procedure pursuant to NRAP 2 to provide for an expedited appeal. The notice of intent to appeal must be given within 1 judicial day after the issuance of the order. The record on appeal must be perfected within 5 judicial days after the filing of the notice of appeal and transmitted to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court. The appellate court of competent jurisdiction, shall, by court order or rule, provide for a confidential and expedited appellate review of cases appealed under this section.

442.268 Civil immunity of person performing judicially authorized abortion in accordance with provisions of NRS 442.240 to 442.270, inclusive. If an abortion is judicially authorized and the provisions of NRS 442.240 to 442.270, inclusive, are complied with, an action by the parents or guardian of the minor against persons performing the abortion is barred. This civil immunity extends to the performance of the abortion and any necessary accompanying services which are performed in a competent manner. The costs of the action, if brought, must be borne by the parties respectively.

