

SA 2004 RF 0019,
Amdt # 2-NS

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

(Insert 100 word title and summary)

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose an amendment to the Constitution of the State of California relating to parental notification prior to the performance of an abortion on a pregnant unemancipated minor, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendment reads as follows:

SECTION 1. Title

This amendment shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

SECTION 2. Declaration of Findings and Purposes

The People of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks to their children, and promoting parent-child communication and parental responsibility.

SECTION 3. Parental Notification

Section 32 of Article 1 of the California Constitution is added to read:

SEC. 32 (a) For purposes of this Section, the following terms shall be defined to mean:

(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child, a child conceived but not yet born.

(2) "Unborn child" means any individual human organism from fertilization until birth.

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

(4) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.

(5) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.

(6) "Unemancipated minor" means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America and who has not been declared emancipated pursuant to state law. For the purposes of this Section, pregnancy does not emancipate a female under the age of 18 years.

(7) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(b) Notwithstanding Article 1, Section 1, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subsection (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in subsection (c) and a reflection period of at least forty-eight (48) hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subsection (d) and a reflection period of at

least forty-eight (48) hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subsection (e); or until the physician has received a copy of a waiver of notification from the court as provided in subsection (h) or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this Section.

(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent. A form for the notice shall be prescribed by the Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) In lieu of the personal delivery required in subsection (c) of this Section, written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subsection at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.

(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least forty-eight (48) hours may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement: **"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."** The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(f) Notice shall not be required under this Section if the attending physician certifies in the unemancipated minor's medical records the medical indications

supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency as defined in subsection (a)(3) of this Section.

(g) Notice shall not be required under this Section if waived pursuant to this subsection and subsections (h), or (j). If the pregnant unemancipated minor elects not to permit notification of a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subsection, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notices required pursuant to this Section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court, and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent of the unemancipated minor or her counsel. Notice shall be given to the unemancipated minor of the date, time and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notification.

(2) If the judge finds, by clear and convincing evidence, that the unemancipated minor is not sufficiently mature and well-informed to decide whether to have an abortion, and notification of a parent or guardian is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notification. If the finding that notification of a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse by a parent or guardian, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.