

# WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

## OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

### WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Amends California Constitution to prohibit abortion for unemancipated minor until 48 hours after physician notifies minor's parent or legal guardian, except in medical emergency or with parental waiver.
- Permits minor to obtain court order waiving notice based on clear and convincing evidence of minor's maturity or best interests.
- Mandates various reporting requirements, including reports from physicians regarding abortions performed on minors.
- Authorizes monetary damages against physicians for violation.
- Requires minor's consent to abortion, with certain exceptions.
- Permits judicial relief if minor's consent coerced.

### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Potential unknown net state costs of several million dollars annually for health and social services programs, court administration, and state health agency administration combined.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

In 1953, a state law was enacted that allowed minors to receive, without parental consent or notification, the same types of medical care for a pregnancy that are available to an adult. Based on this law and later legal developments related to abortion, minors were able to obtain abortions without parental consent or notification.

In 1987, the Legislature amended this law to require minors to obtain the consent of either a parent or a court before obtaining an abortion. However, due to legal challenges, the law was never implemented, and the California Supreme Court ultimately struck it down in 1997. Consequently, minors in the state currently receive abortion services to the same extent as adults. This includes minors in various state health care programs, such as the Medi-Cal health care program for low-income individuals.

### PROPOSAL

#### Notification Requirements

This proposition amends the California Constitution to require, with certain exceptions, a physician (or his or her representative) to *notify* the parent or legal guardian of a pregnant minor at least 48 hours before performing an abortion involving that minor. (This measure does not require a physician or a minor to obtain the consent of a parent or guardian.) This measure applies only to cases involving an "unemancipated" minor. The proposition identifies an unemancipated minor as being a female under the age of 18 who has not entered into a valid marriage, is not on active duty in the armed services of the United States, and has not been declared free from her parents' or guardians' custody and control under state law.

A physician would provide the required notification in either of the following two ways:

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

***Personal Written Notification.*** Written notice could be provided to the parent or guardian personally—for example, when a parent accompanied the minor to an office examination.

***Mail Notification.*** A parent or guardian could be sent a written notice by certified mail so long as a return receipt was requested by the physician and delivery of the notice was restricted to the parent or guardian who must be notified. An additional copy of the written notice would have to be sent at the same time to the parent or guardian by first-class mail. Under this method, notification would be presumed to have occurred as of noon on the second day after the written notice was mailed.

### **Exceptions to Notification Requirements**

The measure provides the following exceptions to the notification requirements:

***Medical Emergencies.*** The notification requirements would not apply if the physician certifies in the minor's medical record that the abortion is necessary to prevent the mother's death or that a delay would "create serious risk of substantial and irreversible impairment of a major bodily function."

***Waivers Approved by Parent or Guardian.*** A minor's parent or guardian could waive the notification requirements and the waiting period by completing and signing a written waiver form for the physician. The parent or guardian must specify on this form that the waiver would be valid either (1) for 30 days, (2) until a specified date, or (3) until the minor's 18<sup>th</sup> birthday. The form would need to be notarized unless the parent or guardian delivered it personally to the physician.

***Waivers Approved by Courts.*** The pregnant minor could ask a juvenile court to waive the

notification requirements. A court could do so if it finds that the minor is sufficiently mature and well-informed to decide whether to have an abortion or that notification would not be in the minor's best interest. If the waiver request is denied, the minor could appeal that decision to an appellate court.

A minor seeking a waiver would not have to pay court fees, would be appointed a temporary guardian and provided other assistance in the case by the court, and would be entitled to an attorney appointed by the court. The identity of the minor would be kept confidential. The court would generally have to hear and issue a ruling within three business days of receiving the waiver request. The appellate court would generally have to hear and decide any appeal within four business days.

The proposition also requires that, in any case in which the court finds evidence of physical, sexual, or emotional abuse, the court must refer the evidence to the county child protection agency.

### **State Reporting Requirements**

Physicians are required by this proposition to file a form reporting certain information to the state Department of Health Services (DHS) within one month after performing an abortion on a minor. The DHS form would include the date and facility where the abortion was performed, the minor's month and year of birth, and certain other information about the minor and the circumstances under which the abortion was performed. The forms that physicians would file would not identify the minor or any parent or guardian by name. Based on these forms, DHS would compile certain statistical information relating to abortions performed on minors in an annual report that would be available to the public.

The courts are required by the measure to report annually to the state Judicial Council the number

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ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

of petitions filed and granted or denied. The reports would be publicly available. The measure also requires the Judicial Council to prescribe a manner of reporting that ensures the confidentiality of any minor who files a petition.

**Penalties**

Any person who performs an abortion on a minor and who fails to comply with the provisions of the measure would be liable for damages in a civil action brought by the minor, her legal representative, or by a parent or guardian wrongfully denied notification. Any person, other than the minor or her physician, who knowingly provides false information that notice of an abortion has been provided to a parent or guardian would be guilty of a misdemeanor punishable by a fine.

**Relief From Coercion**

The measure allows a minor to seek help from the juvenile court if anyone attempts to coerce her to have an abortion. A court would be required to consider such cases quickly and could take whatever action it found necessary to prevent coercion.

**FISCAL EFFECTS**

The fiscal effects of this measure on state government would depend mainly upon how these new requirements affect the behavior of minors regarding abortion and childbearing. Studies of similar laws in other states suggest that the effect of this measure on the birthrate for California minors would be limited, if any. If it were to increase the birthrate for California minors, the net cost to the state would probably not exceed several million dollars annually for health and social services programs, the courts, and state administration combined. We discuss the potential major fiscal effects of the measure below.

**Savings and Costs for State Health Care Programs**

Studies of other states with laws similar to the one proposed in this measure suggest that it could result in a reduction in the number of abortions obtained by minors within California. This reduction in abortions performed in California might be offset to an unknown extent by an increase in the number of out-of-state abortions obtained by California minors. Some minors might also avoid pregnancy as a result of this measure, further reducing the number of abortions for this group. If, for either reason, this proposition reduces the overall number of minors obtaining abortions in California, it is also likely that fewer abortions would be performed under the Medi-Cal Program and other state health care programs that provide medical services for minors. This would result in unknown state savings for these programs.

This measure could also result in some unknown additional costs for state health care programs. If this measure results in a decrease in minors' abortions and an increase in the birthrate of children in low-income families eligible for publicly funded health care, the state would incur additional costs. These could include costs for medical services provided during pregnancy, deliveries, and follow-up care.

The net fiscal effect, if any, of these or other related cost and savings factors would probably not exceed costs of a few million dollars annually to the state. These costs would not be significant compared to total state spending for programs that provide health care services. The Medi-Cal Program alone is estimated to cost the state \$13.8 billion in 2006–07.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

**State Health Agency Administrative Costs**

The DHS would incur first-year state costs of up to \$350,000 to develop the new forms needed to implement this measure, establish the physician reporting system, and prepare the initial annual report containing statistical information on abortions obtained by minors. The ongoing state costs for DHS to implement this measure could be as much as \$150,000 annually.

**Juvenile and Appellate Court Administrative Costs**

The measure would result in increased state costs for the courts, primarily as a result of the provisions allowing minors to request a court waiver of the notification requirements. The magnitude of these costs is unknown, but could reach several million dollars annually, depending primarily on the number of minors that sought waivers. These costs would not be significant compared to total state expenditures for the courts, which are estimated to be \$2 billion in 2006–07.

**Social Services Program Costs**

If this measure discourages some minors from obtaining abortions and increases the birthrate among low-income minors, expenditures for cash assistance and services to needy families would increase under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The magnitude of these costs, if any, would probably not exceed a few million dollars annually. The CalWORKs program is supported with both state and federal funds, but because all CalWORKs federal funds are capped, these additional costs would probably be borne by the state. These costs would not be significant compared to total state spending for CalWORKs, which is estimated to cost about \$5 billion in state and federal funds in 2006–07. Under these circumstances, there could also be a minor increase in child welfare and foster care costs for the state and counties.



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**ARGUMENT IN FAVOR OF PROPOSITION 85**

IN CALIFORNIA, a daughter under 18 can't get aspirin from the school nurse, get a flu shot, or have a tooth pulled without a parent knowing.

BUT, UNBELIEVABLY, surgical or chemical abortions can be secretly performed on minor girls—even 12-year-olds—without parents' knowledge.

PARENTS are then not *prepared to help* young daughters with the serious physical, emotional, or psychological complications which may result from an abortion or to protect their daughters from further sexual abuse, exploitation, and pregnancies.

A study of over 46,000 pregnancies of SCHOOL-AGE GIRLS in California found that *over two-thirds* were impregnated by ADULT MEN whose mean age was 22.6 years.

Investigations have shown that *secret abortions* on minors in California are RARELY REPORTED to child protective services although these pregnancies are *evidence* of statutory rape and sexual abuse. This leaves these girls *vulnerable* to further SEXUAL ABUSE, RAPES, pregnancies, abortions, and sexually transmitted diseases.

That's why *more than ONE MILLION SIGNATURES* were submitted to allow Californians to *vote* on the "Parents' Right to Know and Child Protection" / Proposition 85.

PROP. 85 will require that doctors notify a parent or guardian at least 48 hours before performing abortions on minor daughters.

PARENTS AND DAUGHTERS in more than 30 other states *have benefited for years* from laws like Prop. 85. Many times, after such laws pass, there have been substantial reductions in pregnancies and abortions among minors.

When parents are involved and minors cannot anticipate *secret access to free abortions* they more often avoid the reckless behavior which leads to pregnancies. Older men, including Internet predators, are deterred from impregnating minors when secret abortions are not available to *conceal their crimes*.

If she chooses, a minor may petition juvenile court to permit an abortion without notifying a parent. She can request a lawyer to help her. If the evidence shows she is mature enough to decide for herself or that notifying a parent is not in her best interests, the judge will grant her petition. The proceedings must be confidential, prompt, and free. She may also seek help from juvenile court if she is being coerced by anyone to consent to an abortion.

POLLS SHOW most people support parental notification laws. They know that a minor girl—pregnant, scared, and possibly abandoned or *pressured by an older boyfriend*—NEEDS the advice and support of a *parent*.

PARENTS have invested more attention and love in raising their daughter, know her personal and medical history better, and care more about her future than STRANGERS employed by abortion clinics PROFITING from *performing many abortions on minors*.

A minor still has a legal right to obtain or refuse an abortion, but a parent can help her understand all options, obtain competent care, and provide medical records and history.

An *informed parent* can also get PROMPT CARE for *hemorrhage, infections*, and other possibly *fatal* complications.

VOTE "YES" on PROPOSITION 85 TO ALLOW PARENTS TO CARE FOR AND PROTECT THEIR MINOR DAUGHTERS' WELL-BEING, HEALTH, and SAFETY!

[www.YESon85.net](http://www.YESon85.net)

**WILLIAM P. CLARK**, California Supreme Court Justice (Ret.)

**MARY L. DAVENPORT, M.D.**, Fellow

American College of Obstetricians and Gynecologists

**PROFESSOR JOSEPH R. ZANGA, M.D., FAAP**, Past President

American Academy of Pediatrics

**REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 85**

NO LAW CAN FORCE FAMILIES TO COMMUNICATE.

Of course, parents rightfully want to be involved in their teenagers' lives, but in the REAL WORLD, *some teenagers live in dangerous homes. Some parents are violent or sexually abuse their daughters.*

IN THE REAL WORLD, Proposition 85:

- WON'T STOP CHILD PREDATORS. Backers are exploiting our fear of predators to advance their own political agenda.
- WON'T REDUCE TEEN PREGNANCY.
- PUTS TEENS AT RISK. Scared, pregnant teens from abusive families won't go to court . . . but they may resort to dangerous back-alley abortions—or even consider suicide.
- MEANS DANGEROUS DELAYS IN CRITICAL MEDICAL CARE. *The New England Journal of Medicine* reported that, after a law like this took effect, *some pregnant teens waited months to seek care, getting riskier second trimester abortions.*

The California Supreme Court found "overwhelming" evidence that similar laws in other states cause real harm to teenagers and families.

*Don't be misled.*

For ninety years, Planned Parenthood has been a trusted provider of quality healthcare. Caring staff counsel pregnant teens to talk to parents—and most do.

Planned Parenthood and other family planning clinics COMPLY WITH ALL CALIFORNIA LAWS ON CHILD ABUSE REPORTING. To charge *NOW* that they protect criminals is ridiculous. DHHS's Office of Inspector General's recent investigation didn't find evidence of a single reporting violation.

The *San Jose Mercury News* says Proposition 85 is "*PART OF A LARGER STRATEGY TO CHIP AWAY AT LEGALIZED ABORTION IN THE UNITED STATES.*"

Prop. 85 threatens teens . . . and a whole lot more.

VOTE NO.

**DONNA W. CHIPPS**, Executive Vice President  
League of Women Voters of California

**BO GREAVES, M.D.**, President  
California Academy of Family Physicians

**JEANNE A. CONRY, M.D.**, Vice Chair  
The American College of Obstetricians and Gynecologists,  
District IX California

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ARGUMENT AGAINST PROPOSITION 85

DOCTORS AND NURSES, including the California Medical Association, the California Nurses Association, American Academy of Pediatrics-California District, California Academy of Family Physicians, and the American College of Obstetricians and Gynecologists-District IX California, STRONGLY OPPOSE PROPOSITION 85.

They understand that while PARENTS RIGHTFULLY WANT TO BE INVOLVED IN THEIR TEENAGERS' LIVES, *in the real world*, SOME California TEENAGERS COME FROM HOMES where they can't talk to their parents, *where there is violence*, or WHERE A FAMILY MEMBER HAS SEXUALLY ABUSED THEM.

THESE TEENS CAN'T GO TO THEIR PARENTS. They fear being kicked out of their homes, beaten, or worse. *Proposition 85 forces these teens to delay critical medical care or turn to self-induced or illegal back-alley abortions.* Some will go across the border; some will suffer serious injuries or even consider suicide.

PROPOSITION 85 PUTS THE HEALTH AND SAFETY OF TEENAGERS AT RISK.

No law can mandate *good* family communication. *The real answer to teen pregnancy and abortion is strong, caring families and comprehensive sex education, including abstinence.* But sadly, not all California teens live in homes with strong, caring families.

For OUR MOST VULNERABLE TEENAGERS—*those who most need protection*—PROPOSITION 85 PUTS THEM IN HARM'S WAY OR FORCES THEM TO GO TO COURT.

FORCING A SCARED, PREGNANT TEENAGER who can't go to her parents INTO CALIFORNIA'S OVERCROWDED COURT SYSTEM WON'T WORK—AND COULD CAUSE TEENS MORE HARM. Courts are already backlogged, there's a lot of red tape, and they are hard to navigate, even for adults.

*Think about it. The teen is scared, pregnant, her family might be abusive. SHE DOESN'T NEED A JUDGE. SHE NEEDS A COUNSELOR AND GOOD MEDICAL CARE—WITHOUT DELAY.*

Proposition 85's new bureaucratic rules WON'T GUARANTEE that parents are notified. Who will sign for the mail? What happens when the mail is delayed, or the parents aren't home, or the teen intercepts the letter?

*The real answer to teen pregnancy is prevention and caring families—NOT NEW LAWS THAT ENDANGER OUR DAUGHTERS.*

AND PROPOSITION 85 IS NOT ABOUT PROTECTING TEENS FROM OLDER MEN AND SEXUAL PREDATORS. *Clinics already provide counseling about responsible behavior and report illegal activities.*

Proposition 85 won't reduce teen pregnancy rates, can't force families to communicate, is complicated and unworkable . . . and is not about predators—BUT IT *WILL* PUT GENERATIONS OF CALIFORNIA'S TEENAGERS AT RISK.

WE ALL MUST CARE *enough* about Proposition 85 to VOTE NO because DEFEATING Prop. 85 is about KEEPING OUR DAUGHTERS SAFE *and* PROTECTING THE RIGHT TO CHOOSE.

SUPPORTERS of Proposition 85—including the Traditional Values Coalition, Evangelicals for Social Action, and Right to Life of Central California—ARE THE SAME PEOPLE WHO WANT TO OVERTURN *ROE v. WADE* and BAN ALL ABORTIONS. Despite what they say, Proposition 85 ISN'T ABOUT PARENTAL RIGHTS; IT'S ABOUT *THEIR* POLITICAL AGENDA.

Join PARENTS, DOCTORS, NURSES, PLANNED PARENTHOOD, and THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA and VOTE NO on 85. For more information about REAL TEEN SAFETY, VISIT OUR WEBSITE, [www.noon85.com](http://www.noon85.com). VOTE NO ON PROP. 85.

**JACK LEWIN, M.D.**, CEO, California Medical Association

**ROBERT L. BLACK, M.D.**  
American Academy of Pediatrics, California District

**KATHY KNEER, CEO**  
Planned Parenthood Affiliates of California

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 85

When parents learn their daughter is pregnant, *ALMOST ALL RESPOND WITH LOVE AND SUPPORT.*

PROPOSITION 85 OFFERS CLEAR BENEFITS TO YOUNG GIRLS:

- The parent can assist her daughter in selecting a doctor. Many abortion clinics employ doctors who have been *disciplined by the medical board* for INCOMPETENCE, NEGLIGENCE, CRIMINAL CONVICTIONS, OR SEXUAL MISCONDUCT. Many have been *cited by health officials* for UNSAFE CONDITIONS.
- An informed parent can *respond quickly* to post-abortion complications. Abortion complications can result in permanent injury, even death. Teens who have *secret abortions* often *delay seeking treatment*. PARENTS WHO *DON'T KNOW, CAN'T HELP.*
- Parents who learn their daughters are *victims of sexual assaults* can *intervene to protect them*. Many abortion providers *CHOOSE NOT TO REPORT SEXUAL ABUSE, abandoning these girls* to FURTHER SEXUAL ABUSE. [www.ChildPredators.com](http://www.ChildPredators.com)

In the rare case of familial abuse, a court will permit a minor to obtain an abortion without notifying a parent—then *notify child protective services* so she can be helped, *NOT*

*LEFT VULNERABLE TO FURTHER HARM.*

A parent of two young teenage daughters, GOVERNOR ARNOLD SCHWARZENEGGER said it would be “. . . THE ULTIMATE OF BEING OUTRAGED . . .” if someone took *his* daughter for a *secret* abortion.

OVER THIRTY STATES already have laws like PROPOSITION 85, and THEIR EXPERIENCE SHOWS THESE LAWS *REDUCE MINORS' PREGNANCY AND ABORTION RATES WITHOUT DANGER AND HARM TO MINORS.*

Currently, the state PAYS FOR SECRET ABORTIONS FOR MINOR GIRLS. *PUT PARENTS IN CHARGE, NOT THE GOVERNMENT!*

VOTE “YES” on PROPOSITION 85! PROTECT OUR DAUGHTERS! See: [www.YESon85.net](http://www.YESon85.net)

**PROFESSOR TERESA STANTON COLLETT, J.D.**  
National Authority on Parental Notification and Involvement Laws

**JANE E. ANDERSON, M.D., FAAP**, Clinical Professor of Pediatrics

**PROFESSOR JOSEPH R. ZANGA, M.D., FAAP**, Past President American Academy of Pediatrics

and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

75084. There shall be collected annually in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do so and perform each and every act that is necessary to collect that additional sum.

75085. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund, for purposes of this division, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this division, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 75086, appropriated without regard to fiscal years.

75086. For the purposes of carrying out this division, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized to be sold for the purpose of carrying out this division. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds that would otherwise be deposited in that fund.

75087. All money derived from premium and accrued interest on bonds sold shall be reserved and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

75088. Any bonds issued or sold pursuant to this division may be refunded by the issuance of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. Approval by the electors of the state for the issuance of the bonds shall include approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

75090. The people of California hereby find and declare that inasmuch as the proceeds from the sale of bonds authorized by this division are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitation imposed by that article.

SEC. 2. If any provision of this Act or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 3. This Act is an exercise of the public power of the People of the State of California for the protection of their health, safety, and welfare and shall be liberally construed to effectuate those purposes.

## PROPOSITION 85

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### SECTION 1. Title

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

#### SEC. 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 and medical decisions involving their children, and promoting and enabling parental care and responsibility.

#### SEC. 3. Parental Notification

Section 32 is added to Article I of the California Constitution, 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 known to be pregnant, except for the purpose of producing a live birth. "Abortion" shall not include the use of any contraceptive drug or device.

(2) "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.

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

(4) "Parent or guardian" means a person who, at the time notice or waiver is required under this section, is either a parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of an unemancipated minor.

(5) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.

(6) "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 Section 1 of Article I, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until the physician or the physician's agent has provided written notice to her parent or guardian personally as provided for in subdivision (c) and a reflection period of at least 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 subdivision (d) and a reflection period of at least 48 hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received a valid written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h), (i), 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 unless delivered by mail, as provided in subdivision (d). A form for the notice shall be prescribed by the State 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) The written notice may be delivered 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. 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 subdivision 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 48 hours may be waived by her parent or guardian. The waiver must be in writing, on a form prescribed by the State Department of Health Services, signed by a parent or guardian, dated, and notarized. The parent or guardian shall specify on the form that the waiver is valid for 30 days, or until a specified date, or until the minor's eighteenth birthday. The written waiver need not be notarized if the parent

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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. For each abortion performed on an unemancipated minor pursuant to this subdivision, the physician or the physician's agent must receive a separate original written waiver that shall be retained with the unemancipated minor's medical records.

(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.

(g) Notice shall not be required under this section if waived pursuant to this subdivision and subdivision (h), (i), or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the minor or person designated by the minor in preparing the documents required pursuant to this section. The petition shall set forth with specificity the 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. The unemancipated 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. The unemancipated minor shall be notified 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 notice of a parent or guardian.

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

(3) If the judge does not make a finding specified in paragraph (1) or (2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings, and entry of judgment as it deems necessary and may prescribe forms for such

proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report of the number of petitions filed, the number of petitions granted under paragraph (1) or (2) of subdivision (h), deemed granted under subdivision (i), denied under paragraph (3) of subdivision (h), and granted and denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The State Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the unemancipated minor or her parent(s) or guardian by name or request other information by which the unemancipated minor or her parent(s) or guardian might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the numbers of the unemancipated minor's previous abortions and deliveries if known, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed after personal delivery of a notice, pursuant to subdivision (c); or was an abortion performed after presumed delivery of a notice by mail, pursuant to subdivision (d); or was an abortion performed after receiving a waiver of notice, pursuant to subdivision (e); or was an abortion performed without notice, pursuant to subdivision (f); or was an abortion performed after receiving any judicial waiver of notice, pursuant to subdivision (h), (i), or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning it with the State Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The State Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, the numbers of prior abortions or deliveries where known, and the numbers of abortions performed after personal delivery of a notice, pursuant to subdivision (c); the numbers of abortions performed after presumed delivery of a notice by mail, pursuant to subdivision (d); the numbers of abortions performed after a waiver of notice, pursuant to subdivision (e); the numbers of abortions performed without notice, pursuant to subdivision (f); and the numbers of abortions performed after any judicial waivers, pursuant to subdivision (h), (i), or (j). The annual statistical report shall be made available to county public health officials, Members of the Legislature, the Governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of ten thousand dollars (\$10,000). In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney fees. Nothing in this section shall abrogate, limit, or restrict the common law rights of parents or guardians, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's



agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this section notice has been or will be delivered, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000).

(q) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), (h), (i), or (j), except where the particular circumstances of a medical emergency or her own mental incapacity precludes obtaining her consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), (h), (i), or (j), an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The State Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (e), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase or word of this section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase, or word of this section would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this section, nothing in this section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.

## PROPOSITION 86

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the California Constitution and the Health and Safety Code, the Insurance Code, the Revenue and Taxation Code, and the Welfare and Institutions Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### THE TOBACCO TAX ACT OF 2006

##### SECTION 1. Statement of Findings

(a) Cigarette smoking and other uses of tobacco are leading causes of many serious health problems, including cancer, heart disease and respiratory diseases. The treatment of tobacco-related diseases imposes a significant burden upon California's already overstressed health care system. Prior efforts to curb the use of tobacco have not sufficiently eased the health care burden on the taxpayers of California.

(b) Tobacco use costs Californians billions of dollars a year in medical expenses and lost productivity.

(c) Currently, the state imposes a tax on cigarettes and tobacco products. Funds from that tax are used in part by the state to fund programs to offset the adverse health consequences of tobacco use. The tobacco tax is an appropriate source to fund prevention, research and treatment of chronic diseases, including improved access to health care for children and adults.

(d) The tax on tobacco products in California has not been raised since 1998. As a consequence, the total tax levied on tobacco products is much less than in many other states. Yet the health consequences to our citizens, particularly children and young adults, and the corresponding

burden on our state's health care system continue.

(e) The deterioration of the state's hospital emergency services network has left many communities unable to adequately cope with the normal flow of emergency services. This emergency services crisis imposes a significant burden on our community clinics and keeps them from fulfilling their important health care function for low income children and adults.

(f) Funds which could be used to provide pioneering research into the prevention and treatment of chronic diseases, and health insurance for our most vulnerable children, are increasingly diverted to address the health care crisis caused, in part, by tobacco-related illnesses.

(g) Almost 80% of adult smokers become addicted to tobacco before age 18. Increasing the cost of cigarettes and other tobacco products and providing a comprehensive tobacco control program have proven to be two of the most effective ways to reduce smoking among youth and the associated health problems and economic costs.

(h) The establishment of programs designed to (1) reduce the consumption of tobacco in the first instance, (2) fund research, early detection and treatment of chronic diseases, and (3) preserve access to emergency hospital services performed by well-trained doctors and nurses, is vital to the public's interest.

#### SEC. 2. Statement of Purpose

(a) The people of California hereby increase the tax on tobacco to reduce the economic costs of tobacco use in California and to provide supplemental funding to:

(1) promote medical research into chronic diseases, particularly cancer;

(2) reduce the impact of chronic diseases through prevention, early detection, treatment and comprehensive health insurance; and

(3) improve access to and delivery of health care, particularly emergency health services.

#### SEC. 3. Tobacco Tax

Article 4 (commencing with Section 30132) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

#### Article 4. The Tobacco Tax of 2006 Trust Fund

30132. The Tobacco Tax of 2006 Trust Fund ("Tobacco Trust Fund") is hereby created in the State Treasury. The fund shall consist of all revenues deposited therein pursuant to this Article, including interest and investment income. Moneys deposited into the Tobacco Tax of 2006 Trust Fund shall be allocated and are continuously appropriated for the exclusive purpose of funding the programs and services in Section 30132.3 and shall be available for expenditure without regard to fiscal years.

30132.1. (a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) and any other taxes in this Chapter, there shall be imposed an additional tax upon every distributor of cigarettes at the rate of one hundred thirty mills (\$0.130) for each cigarette distributed.

(b) For purposes of this Article, the term "cigarette" has the same meaning as in Section 30003, as it read on January 1, 2005.

(c) The tax imposed by this Section, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, shall be imposed on every cigarette and on all tobacco products in the possession or under the control of every dealer, wholesaler, and distributor on and after 12:01 a.m. on January 1, 2007, pursuant to rules and regulations promulgated by the State Board of Equalization.

30132.2. The State Board of Equalization shall determine within one year of the passage of this Act, and annually thereafter, the effect that the additional tax imposed on cigarettes by this Act, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, have on the consumption of cigarettes and tobacco products in this state. To the extent that a decrease in consumption is determined by the State Board of Equalization to be a direct result of the additional tax imposed by this Act, or the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, the State Board of Equalization shall determine the fiscal effect the decrease in consumption has on the California Children and Families Trust Fund created by Proposition 10 (1998). Funds shall be transferred from the

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