

By Senator Harris

24-1493-98

See HB

1 A bill to be entitled
2 An act relating to termination of pregnancies;
3 providing a short title; providing legislative
4 findings and intent; amending s. 390.011, F.S.;
5 revising definitions; defining additional
6 terms; amending s. 390.0111, F.S.; revising
7 provisions relating to terminations of
8 pregnancies; prohibiting the coercion of a
9 minor to have a termination of pregnancy
10 performed; providing a penalty for violation;
11 prohibiting the performing or inducement of a
12 termination of pregnancy upon an unemancipated
13 minor or an incompetent person without
14 specified notice; providing a penalty for
15 violation; providing notice requirements;
16 providing exceptions; providing procedure for
17 judicial waiver of notice; providing for
18 confidentiality of proceedings; providing for
19 issuance of a court order authorizing consent
20 to a termination of pregnancy without
21 notification; providing for dismissal of
22 petition; requiring the issuance of written
23 findings of fact and legal conclusions;
24 providing for expedited confidential appeal;
25 providing for waiver of filing fees; providing
26 a penalty for unauthorized receipt and
27 signature of notice; providing for prima facie
28 evidence in civil actions; providing for
29 construction; amending s. 390.0112, F.S.;
30 providing reporting requirements with respect
31 to terminations of pregnancies for which notice

1 must be given under s. 390.0111, F.S. ;
2 providing for confidentiality of such reports ;
3 providing a fine for failure to meet reporting
4 requirements; providing severability; providing
5 an effective date.

6
7 WHEREAS, the Legislature finds that immature minors
8 often lack the ability to make fully informed choices that
9 take into account both immediate and long-range consequences,
10 and

11 WHEREAS, the medical, emotional, and psychological
12 consequences of abortion are sometimes serious and can be
13 lasting, particularly when the patient is immature, and

14 WHEREAS, the capacity to become pregnant and the
15 capacity for mature judgment concerning the wisdom of an
16 abortion are not necessarily related, and

17 WHEREAS, parents ordinarily possess information
18 essential to a physician's exercise of his or her best medical
19 judgment concerning the child, and

20 WHEREAS, parents who are aware that their minor
21 daughter has had an abortion may better ensure that she
22 receives adequate medical attention after her abortion, and

23 WHEREAS, parental consultation is usually desirable and
24 in the best interests of the minor, and

25 WHEREAS, the Legislature's purpose in enacting parental
26 notice legislation is to further the important and compelling
27 state interests of protecting minors against their own
28 immaturity, fostering family unity and preserving the family
29 as a viable social unit, protecting the constitutional rights
30 of parents to rear children who are members of their

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1 household, and reducing teenage pregnancy and unnecessary
2 abortion, NOW, THEREFORE,

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. SHORT TITLE.--This act may be cited as the
7 "Parental Notice of Abortion Act."

8 Section 2. Section 390.011, Florida Statutes, is
9 amended to read:

10 390.011 Definitions.--As used in this chapter, the
11 term:

12 (1) "Abortion" means the use or prescription of any
13 instrument, medicine, drug, or any other substance or device
14 to terminate the pregnancy of a woman known by the person
15 performing or inducing the termination of pregnancy to be
16 pregnant. Such use or prescription is not an abortion if done
17 with the intent to:termination of human pregnancy with an
18 intention other than to produce a live birth or to remove a
19 dead fetus.

20 (a) Save the life or preserve the health of an unborn
21 child;

22 (b) Remove a dead unborn child; or

23 (c) Deliver an unborn child prematurely in order to
24 preserve the health of both the pregnant woman and her unborn
25 child.

26 (2) "Abortion clinic" or "clinic" means any facility
27 in which abortions are performed. The term does not include:

28 (a) A hospital; or

29 (b) A physician's office, provided that the office is
30 not used primarily for the performance of abortions.

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1 (3) "Actual notice" means the giving of notice
2 directly, in person, or by telephone.

3 ~~(4)(3)~~ "Agency" means the Agency for Health Care
4 Administration.

5 (5) "Coercion" means restraining or dominating the
6 choice of a minor female by force, threat of force, or
7 deprivation of food and shelter.

8 (6) "Constructive notice" means notice by certified
9 mail to the last known address of the parent or legal guardian
10 of a minor or, in the case of an incompetent person, the
11 court-appointed guardian, with delivery deemed to have
12 occurred 48 hours after the certified notice is mailed.

13 ~~(7)(4)~~ "Department" means the Department of Health.

14 (8) "Emancipated minor" means any person under 18
15 years of age who is or has been married or who has been
16 emancipated.

17 ~~(9)(5)~~ "Hospital" means a facility licensed under
18 chapter 395.

19 (10) "Incompetent person" means any person who has
20 been adjudicated an incapacitated person according to the
21 provisions of s. 744.331, or similar laws of any other state.

22 (11) "Medical emergency" means a condition that, on
23 the basis of a physician's good faith clinical judgment, so
24 complicates the medical condition of a pregnant woman as to
25 necessitate the immediate termination of her pregnancy to
26 avert her death, or for which a delay in the termination of
27 her pregnancy will create serious risk of substantial and
28 irreversible impairment of a major bodily function.

29 (12) "Neglect" means the failure of a parent to supply
30 a child with necessary food, clothing, shelter, or medical
31 care when reasonably able to do so, or the failure to protect

1 a child from conditions or actions that imminently and
2 seriously endanger the child's physical or mental health when
3 reasonably able to do so.

4 (13) "Physical abuse" means the intentional infliction
5 of any physical injury upon a child by a parent or legal
6 guardian of the child.

7 (14)~~(6)~~ "Physician" means a physician licensed under
8 chapter 458 or chapter 459 or a physician practicing medicine
9 or osteopathic medicine in the employment of the United
10 States.

11 (15) "Sexual abuse" shall have the same meaning as
12 defined in s. 415.503(15) and, as used in this chapter, shall
13 refer to the commission of acts set forth in s. 415.503(15)
14 against a minor by a family member as defined in s.
15 440.13(1)(b).

16 (16)~~(7)~~ "Third trimester" means the weeks of pregnancy
17 after the 24th week of pregnancy.

18 Section 3. Section 390.0111, Florida Statutes, is
19 amended to read:

20 390.0111 Termination of pregnancies.--

21 (1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.--No
22 termination of pregnancy shall be performed on any human being
23 in the third trimester of pregnancy unless:

24 (a) Two physicians certify in writing to the fact
25 that, to a reasonable degree of medical probability, the
26 termination of pregnancy is necessary to save the life or
27 preserve the health of the pregnant woman; or

28 (b) The physician certifies in writing to the medical
29 necessity for legitimate emergency medical procedures for
30 termination of pregnancy in the last trimester, and another
31 physician is not available for consultation.

1 (2) PERFORMANCE BY PHYSICIAN REQUIRED.--No termination
2 of pregnancy shall be performed at any time except by a
3 physician.

4 (3) COERCION PROHIBITED.--No parent, guardian, or any
5 other person shall coerce a minor to have a termination of
6 pregnancy performed or induced. If a minor is denied financial
7 support by the minor's parents, guardian, or custodian due to
8 the minor's refusal to have a termination of pregnancy
9 performed or induced, the minor shall be deemed emancipated
10 for the purposes of eligibility for public-assistance
11 benefits, except that such benefits may not be used to obtain
12 a termination of pregnancy.

13 (4)(3) CONSENTS REQUIRED.--A termination of pregnancy
14 may not be performed or induced except with the voluntary and
15 informed written consent of the pregnant woman or, in the case
16 of an ~~a mental~~ incompetent person, fulfillment of the
17 notification requirements in subsection (5) and the voluntary
18 and informed written consent of her court-appointed guardian.

19 (a) Except in the case of a medical emergency, consent
20 to a termination of pregnancy is voluntary and informed only
21 if:

22 1. The physician who is to perform the procedure, or
23 the referring physician, has, at a minimum, orally, in person,
24 informed the woman of:

25 a. The nature and risks of undergoing or not
26 undergoing the proposed procedure that a reasonable patient
27 would consider material to making a knowing and willful
28 decision of whether to terminate a pregnancy.

29 b. The probable gestational age of the fetus at the
30 time the termination of pregnancy is to be performed.

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1 c. The medical risks to the woman and fetus of
2 carrying the pregnancy to term.

3 2. Printed materials prepared and provided by the
4 department have been provided to the pregnant woman, if she
5 chooses to view these materials, including:

6 a. A description of the fetus.

7 b. A list of agencies that offer alternatives to
8 terminating the pregnancy.

9 c. Detailed information on the availability of medical
10 assistance benefits for prenatal care, childbirth, and
11 neonatal care.

12 3. The woman acknowledges in writing, before the
13 termination of pregnancy, that the information required to be
14 provided under this subsection has been provided.

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16 Nothing in this paragraph is intended to prohibit a physician
17 from providing any additional information which the physician
18 deems material to the woman's informed decision to terminate
19 her pregnancy.

20 (b) In the event a medical emergency exists and a
21 physician cannot comply with the requirements for informed
22 consent, a physician may terminate a pregnancy if he or she
23 has obtained at least one corroborative medical opinion
24 attesting to the medical necessity for emergency medical
25 procedures and to the fact that to a reasonable degree of
26 medical certainty the continuation of the pregnancy would
27 threaten the life of the pregnant woman. In the event no
28 second physician is available for a corroborating opinion, the
29 physician may proceed but shall document reasons for the
30 medical necessity in the patient's medical records.

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1 (c) Violation of this subsection by a physician
2 constitutes grounds for disciplinary action under s. 458.331
3 or s. 459.015. Substantial compliance or reasonable belief
4 that complying with the requirements of informed consent would
5 threaten the life or health of the patient is a defense to any
6 action brought under this paragraph.

7 (5) NOTIFICATION REQUIRED.--

8 (a) A termination of pregnancy may not be performed or
9 induced upon an unemancipated minor or upon an incompetent
10 person unless the person performing or inducing the
11 termination of pregnancy has given at least 48 hours actual
12 notice, in the case of an emancipated minor, to one parent or
13 to the legal guardian of the pregnant minor or, in the case of
14 an incompetent person, to the court-appointed guardian of the
15 incompetent person, of his or her intention to perform or
16 induce the termination of pregnancy. The notice may be given
17 by a referring physician. The person who performs the
18 termination of pregnancy must receive the written statement of
19 the referring physician certifying that the referring
20 physician has given notice. If actual notice is not possible
21 after a reasonable effort, the person or his or her agent must
22 give 48 hours constructive notice.

23 (b) If a minor patient declares in a signed written
24 statement that she is a victim of sexual abuse, neglect, or
25 physical abuse by either of her parents or her legal guardian,
26 then the attending physician shall give the notice required by
27 paragraph (a) to a brother or sister of the minor who is over
28 21 years of age, or to a stepparent or grandparent specified
29 by the minor. The doctor who intends to perform the
30 termination of pregnancy must certify in the patient's medical
31 record that he or she has received the written declaration of

1 abuse or neglect. Any physician relying in good faith on a
2 written statement under this paragraph shall not be civilly or
3 criminally liable under any provisions of this section for
4 failure to give notice.

5 (c) Notice shall not be required under paragraphs (a)
6 or (b) if:

7 1. A medical emergency exists and there is
8 insufficient time for the attending physician to comply with
9 the notification requirements. In the event a medical
10 emergency exists, the physician may terminate the pregnancy if
11 he or she has obtained at least one corroborative medical
12 opinion attesting to the medical necessity for emergency
13 medical procedures and to the fact that to a reasonable degree
14 of medical certainty the continuation of the pregnancy would
15 threaten the life of the pregnant woman. In the event no
16 second physician is available for a corroborating opinion, the
17 physician may proceed but shall document reasons for the
18 medical necessity in the patient's medical records;

19 2. Notice is waived in writing by the person who is
20 entitled to notice; or

21 3. Notice is waived under the provisions of subsection
22 (6).

23 (6) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

24 (a) A minor or an incompetent person may petition any
25 circuit court for a waiver of the notice requirements of
26 subsection (5) and may participate in proceedings on her own
27 behalf. The petition shall include a statement that the
28 complainant is pregnant and is unemancipated. The court may
29 appoint a guardian ad litem for her. Any guardian ad litem
30 appointed under this subsection shall act to maintain the
31 confidentiality of the proceedings. The circuit court shall

1 advise the minor or incompetent person that she has a right to
2 court-appointed counsel and shall provide her with counsel
3 upon her request.

4 (b) Court proceedings under this section shall be
5 confidential and shall ensure the anonymity of the minor or
6 incompetent person. All court proceedings under this section
7 shall be sealed. The minor or incompetent person shall have
8 the right to file her petition in the circuit court using a
9 pseudonym or using solely her initials. All documents related
10 to this petition shall be confidential and shall not be
11 available to the public. Court proceedings under this section
12 shall be given precedence over other pending matters to the
13 extent necessary to ensure that the court reaches a decision
14 promptly. The court shall rule, and issue written findings of
15 fact and conclusions of law, within 48 hours of the time that
16 the petition was filed, except that the 48-hour limitation may
17 be extended at the request of the minor or incompetent person.
18 If the court fails to rule within the 48-hour period and an
19 extension was not requested, then the petition shall be deemed
20 to have been granted, and the notice requirement shall be
21 waived.

22 (c) If the court finds, by clear and convincing
23 evidence, that the minor is sufficiently mature to decide
24 whether to terminate her pregnancy, the court shall issue an
25 order authorizing the minor to consent to the performance or
26 inducement of a termination of pregnancy without the
27 notification of a parent or guardian. If the court does not
28 make the finding specified in this paragraph or paragraph (d),
29 it shall dismiss the petition.

30 (d) If the court finds, by clear and convincing
31 evidence, that there is a pattern of physical, sexual, or

1 emotional abuse of the complainant by one or both of her
2 parents, her guardian, or her custodian, or that the
3 notification of a parent or guardian is not in the best
4 interest of the complainant, the court shall issue an order
5 authorizing the minor to consent to the performance or
6 inducement of a termination of pregnancy without the
7 notification of a parent or guardian. If the court does not
8 make the finding specified in this paragraph or paragraph (c),
9 it shall dismiss the petition.

10 (e) A court that conducts proceedings under this
11 section shall issue written and specific factual findings and
12 legal conclusions supporting its decision and shall order that
13 a confidential record of the evidence and the judge's findings
14 and conclusions be maintained. At the hearing, the court shall
15 hear evidence relating to the emotional development, maturity,
16 intellect and understanding of the minor.

17 (f) An expedited confidential appeal shall be
18 available, as the Supreme Court provides by rule, to any minor
19 or incompetent person to whom the circuit court denies a
20 waiver of notice. An order authorizing a termination of
21 pregnancy without notice shall not be subject to appeal.

22 (g) No filing fees shall be required of any pregnant
23 minor who petitions a court for a waiver of parental
24 notification under this subsection at either the trial or the
25 appellate level.

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27 The requirements and procedures under this subsection are
28 available to minors and incompetent persons whether or not
29 they are residents of this state.

30 (7)(4) STANDARD OF MEDICAL CARE TO BE USED DURING
31 VIABILITY.--If a termination of pregnancy is performed during

1 viability, no person who performs or induces the termination
2 of pregnancy shall fail to use that degree of professional
3 skill, care, and diligence to preserve the life and health of
4 the fetus which such person would be required to exercise in
5 order to preserve the life and health of any fetus intended to
6 be born and not aborted. "Viability" means that stage of fetal
7 development when the life of the unborn child may with a
8 reasonable degree of medical probability be continued
9 indefinitely outside the womb. Notwithstanding the provisions
10 of this subsection, the woman's life and health shall
11 constitute an overriding and superior consideration to the
12 concern for the life and health of the fetus when such
13 concerns are in conflict.

14 (8)~~(5)~~ EXPERIMENTATION ON FETUS PROHIBITED;
15 EXCEPTION.--No person shall use any live fetus or live,
16 premature infant for any type of scientific, research,
17 laboratory, or other kind of experimentation either prior to
18 or subsequent to any termination of pregnancy procedure except
19 as necessary to protect or preserve the life and health of
20 such fetus or premature infant.

21 (9)~~(6)~~ FETAL REMAINS.--Fetal remains shall be disposed
22 of in a sanitary and appropriate manner and in accordance with
23 standard health practices, as provided by rule of the
24 department. Failure to dispose of fetal remains in accordance
25 with department rules is a misdemeanor of the second degree,
26 punishable as provided in s. 775.082 or s. 775.083.

27 (10)~~(7)~~ REFUSAL TO PARTICIPATE IN TERMINATION
28 PROCEDURE.--Nothing in this section shall require any hospital
29 or any person to participate in the termination of a
30 pregnancy, nor shall any hospital or any person be liable for
31 such refusal. No person who is a member of, or associated

1 with, the staff of a hospital, nor any employee of a hospital
2 or physician in which or by whom the termination of a
3 pregnancy has been authorized or performed, who shall state an
4 objection to such procedure on moral or religious grounds
5 shall be required to participate in the procedure which will
6 result in the termination of pregnancy. The refusal of any
7 such person or employee to participate shall not form the
8 basis for any disciplinary or other recriminatory action
9 against such person.

10 (11)~~(8)~~ EXCEPTION.--The provisions of this section
11 shall not apply to the performance of a procedure which
12 terminates a pregnancy in order to deliver a live child.

13 (12)~~(9)~~ PENALTIES FOR VIOLATION.--Except as provided
14 in subsections(4)~~(3)~~and(9)~~(6)~~:

15 (a) Any person who willfully performs, or actively
16 participates in, a termination of a pregnancy procedure in
17 violation of the requirements of this section commits a felony
18 of the third degree, punishable as provided in s. 775.082, s.
19 775.083, or s. 775.084.

20 (b) Any person who performs, or actively participates
21 in, a termination of a pregnancy procedure in violation of the
22 provisions of this section which results in the death of the
23 woman commits a felony of the second degree, punishable as
24 provided in s. 775.082, s. 775.083, or s. 775.084.

25 (c) Any person who intentionally performs or induces a
26 termination of pregnancy with knowledge that, or with reckless
27 disregard as to whether, the person upon whom the termination
28 of pregnancy is to be performed or induced is an unemancipated
29 minor or an incompetent person without providing the required
30 notice commits a felony of the third degree, punishable as
31 provided in s. 775.082, s. 775.083, or s. 775.084.

1 (d) Any person not authorized to receive notice under
2 this subsection who signs a waiver of notice under subsection
3 (5)(c) commits a felony of the third degree, punishable as
4 provided in s. 775.082, s. 775.083, or s. 775.084.

5 (e) Any person who coerces a minor to undergo a
6 termination of pregnancy commits a felony of the third degree,
7 punishable as provided in s. 775.082, s. 775.083, or s.
8 775.084.

9 (13) PRIMA FACIE EVIDENCE; CIVIL ACTIONS;
10 CONSTRUCTION.--Failure to provide persons with the notice
11 required under this section is prima facie evidence of failure
12 to provide notice and of interference with family relations in
13 appropriate civil actions. Such prima facie evidence shall not
14 apply to any issue other than failure to inform the parents or
15 guardian and interference with family relations in appropriate
16 civil actions. The civil action may be based on a claim that
17 the act was a result of simple negligence, gross negligence,
18 wantonness, willfulness, intention, or other legal standard of
19 care. The law of this state shall not be construed to preclude
20 the award of exemplary damages in any appropriate civil action
21 relevant to violations of this section. Nothing in this
22 section shall be construed to limit the common law rights of
23 parents.

24 (14) PROCEEDINGS.--The Supreme Court is requested to
25 adopt rules to ensure that proceedings under this section are
26 handled in an expeditious and confidential manner and in a
27 manner which will satisfy the requirements of federal courts.

28 Section 4. Section 390.0112, Florida Statutes, is
29 amended to read:

30 390.0112 Termination of pregnancies; reporting.--
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1 (1) The director of any medical facility in which any
2 pregnancy is terminated shall submit a monthly report which
3 contains the number of procedures performed, the reason for
4 same, and the period of gestation at the time such procedures
5 were performed to the department. The department shall be
6 responsible for keeping such reports in a central place from
7 which statistical data and analysis can be made.

8 (2) If the termination of pregnancy is not performed
9 in a medical facility, the physician performing the procedure
10 shall be responsible for reporting such information as
11 required in subsection (1).

12 (3) A monthly report indicating the number of notices
13 issued under s. 390.0111, the number of times in which
14 exceptions were made to the notice requirement under s.
15 390.0111, the type of exception, the minor's age, and the
16 number of prior pregnancies and prior terminations of
17 pregnancies of the minor shall be filed with the Department of
18 Health on forms prescribed by the department. No patient names
19 shall be used on the forms.

20 (4)~~(3)~~ Reports submitted pursuant to this section
21 shall be confidential and exempt from the provisions of s.
22 119.07(1) and shall not be revealed except upon the order of a
23 court of competent jurisdiction in a civil or criminal
24 proceeding. This exemption is subject to the Open Government
25 Sunset Review Act in accordance with s. 119.14.

26 (5)~~(4)~~ Any person required under this section to file
27 a report or keep any records who willfully fails to file such
28 report or keep such records may be subject to a \$200 fine for
29 each violation. The department shall be required to impose
30 such fines when reports or records required under this section
31 have not been timely received. For purposes of this section,

1 timely received is defined as 30 days following the preceding
2 month.

3 Section 5. If any provision of this act or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity shall not affect other provisions or
6 applications of the act which can be given effect without the
7 invalid provision or application, and to this end the
8 provisions of this act are declared severable.

9 Section 6. This act shall take effect upon becoming a
10 law.

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HOUSE SUMMARY

Revises various provisions of chapter 390, Florida Statutes, relating to termination of pregnancies, to create the "Parental Notice of Abortion Act."

Revises definitions and provides additional definitions for purposes of the act. Prohibits the coercion of a minor to have a termination of pregnancy performed. Provides a third degree felony penalty for violation.

Prohibits the performing or inducement of a termination of pregnancy upon an unemancipated minor or an incompetent person without 48 hours notice to one parent or to the legal guardian of a pregnant minor, or to the court-appointed guardian of an incompetent person, of the intention to perform the termination of pregnancy. Provides a third degree felony penalty for violation. Provides notice requirements and exceptions.

Provides procedure for judicial waiver of notice. Provides for confidentiality of proceedings. Provides for issuance of a court order authorizing consent to a termination of pregnancy without notification if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide to have her pregnancy terminated or if there is a pattern of physical, sexual, or emotional abuse of the complainant by one or both parents, her guardian, or her custodian, and that notification is not in her best interests.

Provides a third degree felony penalty for unauthorized receipt and signature of notice of a termination of pregnancy.

Provides reporting requirements with respect to terminations of pregnancies for which notice must be given. Provides for confidentiality of such reports. Provides a \$200 fine for failure to meet reporting requirements.