

1 WHEREAS, the capacity to become pregnant and the
2 capacity for mature judgment concerning the wisdom of an
3 abortion are not necessarily related, and

4 WHEREAS, parents ordinarily possess information
5 essential to a physician's exercise of his or her best medical
6 judgment concerning their child, and

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

10 WHEREAS, parental consultation is usually desirable and
11 in the best interests of the minor, and

12 WHEREAS, the Legislature's purpose in enacting parental
13 notice legislation is to further the important and compelling
14 state interests of protecting minors against their own
15 immaturity, fostering family unity and preserving the family
16 as a viable social unit, protecting the constitutional rights
17 of parents to rear children who are members of their
18 household, and reducing teenage pregnancy and unnecessary
19 abortion, NOW, THEREFORE,

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Short title.--This act may be cited as the
24 "Parental Notice of Abortion Act."

25 Section 2. Section 390.011, Florida Statutes, is
26 amended to read:

27 390.011 Definitions.--As used in this chapter, the
28 term:

29 (1) "Abortion" means the termination of human
30 pregnancy with an intention other than to produce a live birth
31 or to remove a dead fetus.

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

3 (a) A hospital; or

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

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

8 ~~(4)(3)~~ "Agency" means the Agency for Health Care
9 Administration.

10 (5) "Child abuse and neglect" shall have the same
11 meaning as defined in s. 415.503(3) and, as used in this
12 chapter, shall refer to the commission of acts set forth in s.
13 415.503(3) against a minor by a family member as defined in s.
14 440.13(1)(b).

15 (6) "Constructive notice" means notice by certified
16 mail to the last known address of the parent or legal guardian
17 of a minor, with delivery deemed to have occurred 48 hours
18 after the certified notice is mailed.

19 ~~(7)(4)~~ "Department" means the Department of Health.

20 ~~(8)(5)~~ "Hospital" means a facility licensed under
21 chapter 395.

22 (9) "Medical emergency" means a condition that, on the
23 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 given a delay in the termination of her
27 pregnancy will create serious risk of substantial and
28 irreversible impairment of a major bodily function.

29 ~~(10)(6)~~ "Physician" means a physician licensed under
30 chapter 458 or chapter 459 or a physician practicing medicine
31

1 or osteopathic medicine in the employment of the United
2 States.

3 (11) "Sexual abuse" shall have the same meaning as
4 defined in s. 415.503(15) and, as used in this chapter, shall
5 refer to the commission of acts set forth in s. 415.503(15)
6 against a minor by a family member as defined in s.
7 440.13(1)(b).

8 (13)~~(7)~~ "Third trimester" means the weeks of pregnancy
9 after the 24th week of pregnancy.

10 Section 3. Section 390.0111, Florida Statutes, is
11 amended to read:

12 390.0111 Termination of pregnancies.--

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

16 (a) Two physicians certify in writing to the fact
17 that, to a reasonable degree of medical probability, the
18 termination of pregnancy is necessary to save the life or
19 preserve the health of the pregnant woman; or

20 (b) The physician certifies in writing to the medical
21 necessity for legitimate emergency medical procedures for
22 termination of pregnancy in the last trimester, and another
23 physician is not available for consultation.

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

27 (3) CONSENTS REQUIRED.--A termination of pregnancy may
28 not be performed or induced except with the voluntary and
29 informed written consent of the pregnant woman or, in the case
30 of a mental incompetent person, the voluntary and informed
31 written consent of her court-appointed guardian.

1 (a) Except in the case of a medical emergency, consent
2 to a termination of pregnancy is voluntary and informed only
3 if:

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

7 a. The nature and risks of undergoing or not
8 undergoing the proposed procedure that a reasonable patient
9 would consider material to making a knowing and willful
10 decision of whether to terminate a pregnancy.

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

13 c. The medical risks to the woman and fetus of
14 carrying the pregnancy to term.

15 2. Printed materials prepared and provided by the
16 department have been provided to the pregnant woman, if she
17 chooses to view these materials, including:

18 a. A description of the fetus.

19 b. A list of agencies that offer alternatives to
20 terminating the pregnancy.

21 c. Detailed information on the availability of medical
22 assistance benefits for prenatal care, childbirth, and
23 neonatal care.

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

27

28 Nothing in this paragraph is intended to prohibit a physician
29 from providing any additional information which the physician
30 deems material to the woman's informed decision to terminate
31 her pregnancy.

1 (b) In the event a medical emergency exists and a
2 physician cannot comply with the requirements for informed
3 consent, a physician may terminate a pregnancy if he or she
4 has obtained at least one corroborative medical opinion
5 attesting to the medical necessity for emergency medical
6 procedures and to the fact that to a reasonable degree of
7 medical certainty the continuation of the pregnancy would
8 threaten the life of the pregnant woman. In the event no
9 second physician is available for a corroborating opinion, the
10 physician may proceed but shall document reasons for the
11 medical necessity in the patient's medical records.

12 (c) Violation of this subsection by a physician
13 constitutes grounds for disciplinary action under s. 458.331
14 or s. 459.015. Substantial compliance or reasonable belief
15 that complying with the requirements of informed consent would
16 threaten the life or health of the patient is a defense to any
17 action brought under this paragraph.

18 (4) NOTIFICATION REQUIRED.--

19 (a) A termination of pregnancy may not be performed or
20 induced upon a minor unless the person performing or inducing
21 the termination of pregnancy has given at least 48 hours'
22 actual notice to one parent or to the legal guardian of the
23 pregnant minor of his or her intention to perform or induce
24 the termination of pregnancy. The notice may be given by a
25 referring physician. The person who performs the termination
26 of pregnancy must receive the written statement of the
27 referring physician certifying that the referring physician
28 has given notice. If actual notice is not possible after a
29 reasonable effort, the person or his or her agent must give 48
30 hours' constructive notice.

31 (b) Notice shall not be required if:

1 1. A medical emergency exists and there is
2 insufficient time for the attending physician to comply with
3 the notification requirements. In the event a medical
4 emergency exists, the physician may terminate the pregnancy if
5 he or she has obtained at least one corroborative medical
6 opinion attesting to the medical necessity for emergency
7 medical procedures. In the event no second physician is
8 available for a corroborating opinion, the physician may
9 proceed but must document reasons for the medical necessity in
10 the patient's medical records;

11 2. Notice is waived in writing by the person who is
12 entitled to notice;

13 3. Notice is waived if the minor is or has been
14 married or has had the disability of nonage removed pursuant
15 to s. 743.015, or similar statutes of other states; or

16 4. Notice is waived under the provisions of subsection
17 (5).

18 (c) Violation of this subsection by a physician
19 constitutes grounds for disciplinary action under s. 458.331
20 or s. 459.015.

21 (5) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

22 (a) A minor may petition any circuit court for a
23 waiver of the notice requirements of subsection (4) and may
24 participate in proceedings on her own behalf. The petition
25 shall include a statement that the complainant is pregnant and
26 notice has not been waived. The court may appoint a guardian
27 ad litem for her. Any guardian ad litem appointed under this
28 subsection shall act to maintain the confidentiality of the
29 proceedings. The circuit court shall advise the minor that she
30 has a right to court-appointed counsel and shall provide her
31 with counsel upon her request.

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

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

26 (d) If the court finds, by clear and convincing
27 evidence, that there is evidence of child abuse or neglect, or
28 sexual abuse of the complainant by one or both of her parents,
29 her guardian, or her custodian, or that the notification of a
30 parent or guardian is not in the best interest of the
31 complainant, the court shall issue an order authorizing the

1 minor to consent to the performance or inducement of a
2 termination of pregnancy without the notification of a parent
3 or guardian. If the court does not make the finding specified
4 in this paragraph or paragraph (c), it shall dismiss the
5 petition.

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

13 (f) An expedited confidential appeal shall be
14 available, as the Supreme Court provides by rule, to any minor
15 to whom the circuit court denies a waiver of notice. An order
16 authorizing a termination of pregnancy without notice shall
17 not be subject to appeal.

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

22
23 The requirements and procedures under this subsection are
24 available to minors whether or not they are residents of this
25 state.

26 (6)(4) STANDARD OF MEDICAL CARE TO BE USED DURING
27 VIABILITY.--If a termination of pregnancy is performed during
28 viability, no person who performs or induces the termination
29 of pregnancy shall fail to use that degree of professional
30 skill, care, and diligence to preserve the life and health of
31 the fetus which such person would be required to exercise in

1 order to preserve the life and health of any fetus intended to
2 be born and not aborted. "Viability" means that stage of fetal
3 development when the life of the unborn child may with a
4 reasonable degree of medical probability be continued
5 indefinitely outside the womb. Notwithstanding the provisions
6 of this subsection, the woman's life and health shall
7 constitute an overriding and superior consideration to the
8 concern for the life and health of the fetus when such
9 concerns are in conflict.

10 (7)~~(5)~~ EXPERIMENTATION ON FETUS PROHIBITED;
11 EXCEPTION.--No person shall use any live fetus or live,
12 premature infant for any type of scientific, research,
13 laboratory, or other kind of experimentation either prior to
14 or subsequent to any termination of pregnancy procedure except
15 as necessary to protect or preserve the life and health of
16 such fetus or premature infant.

17 (8)~~(6)~~ FETAL REMAINS.--Fetal remains shall be disposed
18 of in a sanitary and appropriate manner and in accordance with
19 standard health practices, as provided by rule of the
20 department. Failure to dispose of fetal remains in accordance
21 with department rules is a misdemeanor of the second degree,
22 punishable as provided in s. 775.082 or s. 775.083.

23 (9)~~(7)~~ REFUSAL TO PARTICIPATE IN TERMINATION
24 PROCEDURE.--Nothing in this section shall require any hospital
25 or any person to participate in the termination of a
26 pregnancy, nor shall any hospital or any person be liable for
27 such refusal. No person who is a member of, or associated
28 with, the staff of a hospital, nor any employee of a hospital
29 or physician in which or by whom the termination of a
30 pregnancy has been authorized or performed, who shall state an
31 objection to such procedure on moral or religious grounds

1 shall be required to participate in the procedure which will
2 result in the termination of pregnancy. The refusal of any
3 such person or employee to participate shall not form the
4 basis for any disciplinary or other recriminatory action
5 against such person.

6 (10)~~(8)~~ EXCEPTION.--The provisions of this section
7 shall not apply to the performance of a procedure which
8 terminates a pregnancy in order to deliver a live child.

9 (11)~~(9)~~ PENALTIES FOR VIOLATION.--Except as provided
10 in subsections (3), (4), and (8)~~(6)~~:

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

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

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

26 Section 4. If any provision of this act or the
27 application thereof to any person or circumstance is held
28 invalid, the invalidity shall not affect other provisions or
29 applications of the act which can be given effect without the
30 invalid provision or application, and to this end the
31 provisions of this act are declared severable.

1 Section 5. This act shall take effect upon becoming a
2 law.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 SB 1814

7 The bill deletes references to "unemancipated minors" and
8 "incompetent persons." The notice requirements in the bill are
9 made applicable to minors, except that the requirements are
10 expressly waived for a minor if married, has been married, or
11 has had the disability of nonage removed under s. 743.015,
F.S., or similar laws of other states. It subjects physicians
who do not comply with the notice requirements contained in
the bill to professional disciplinary action. A definition for
the term "child abuse and neglect" is added.

12 The definition of "abortion" is restored to existing language
13 and the definition for the terms "coercion," "emancipated
14 minor," "incompetent person," "neglect," and "physical abuse"
15 are deleted. Also deleted from the bill is language:
16 prohibiting coercion; requiring a physician to give notice to
17 a minor's sibling who is 21 years of age, a stepparent, or
18 grandparent specified by the minor when the minor provides a
19 written declaration that she is a victim of sexual abuse,
20 neglect, or physical abuse, and related requirements; criminal
21 and civil sanctions and the prescription of the underlying
22 conduct to which such sanctions were made applicable; and a
23 reporting requirement imposed on physicians for the provision
24 of certain statistical information to the Department of
25 Health.