

1 A bill to be entitled
2 An act relating to termination of pregnancies;
3 providing a short title; amending s. 390.011,
4 F.S.; defining additional terms; amending s.
5 390.0111, F.S.; revising provisions relating to
6 terminations of pregnancies; prohibiting the
7 performing or inducement of a termination of
8 pregnancy upon a minor without specified
9 notice; providing disciplinary action for
10 violation; providing notice requirements;
11 providing exceptions; providing procedure for
12 judicial waiver of notice; providing for notice
13 of right to counsel; prohibiting court from
14 requiring counties to pay for such counsel;
15 providing for confidentiality of proceedings;
16 providing for issuance of a court order
17 authorizing consent to a termination of
18 pregnancy without notification; providing for
19 dismissal of petition; requiring the issuance
20 of written findings of fact and legal
21 conclusions; providing for expedited
22 confidential appeal; providing for waiver of
23 filing fees; requesting the Supreme Court to
24 adopt rules; providing for severability;
25 providing an effective date.

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27 WHEREAS, the Legislature finds that immature minors
28 often lack the ability to make fully informed choices that
29 take into account both immediate and long-range consequences,
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1 WHEREAS, the medical, emotional, and psychological
2 consequences of abortion are sometimes serious and can be
3 lasting, particularly when the patient is immature, and

4 WHEREAS, the capacity to become pregnant and the
5 capacity for mature judgment concerning the wisdom of an
6 abortion are not necessarily related, and

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

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

13 WHEREAS, parental consultation is usually desirable and
14 in the best interests of the minor, and

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

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

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

28 Section 2. Section 390.011, Florida Statutes, is
29 amended to read:

30 390.011 Definitions.--As used in this chapter, the
31 term:

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

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

6 (a) A hospital; or

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

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

11 (4)(3) "Agency" means the Agency for Health Care
12 Administration.

13 (5) "Child abuse and neglect" shall have the same
14 meaning as defined in s. 415.503(3) and, as used in this
15 chapter, shall refer to the commission of acts set forth in s.
16 415.503(3) against a minor by a family member as defined in s.
17 741.28(2).

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

22 (7)(4) "Department" means the Department of Health.

23 (8)(5) "Hospital" means a facility licensed under
24 chapter 395.

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

1 ~~(10)(6)~~ "Physician" means a physician licensed under
2 chapter 458 or chapter 459 or a physician practicing medicine
3 or osteopathic medicine in the employment of the United
4 States.

5 (11) "Sexual abuse" shall have the same meaning as
6 defined in s. 415.503(15) and, as used in this chapter, shall
7 refer to the commission of acts set forth in s. 415.503(15)
8 against a minor by a family member as defined in s. 741.28(2).

9 ~~(12)(7)~~ "Third trimester" means the weeks of pregnancy
10 after the 24th week of pregnancy.

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

13 390.0111 Termination of pregnancies.--

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

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

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

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

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

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

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

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

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

15 c. The medical risks to the woman and fetus of
16 carrying the pregnancy to term.

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

20 a. A description of the fetus.

21 b. A list of agencies that offer alternatives to
22 terminating the pregnancy.

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

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

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30 Nothing in this paragraph is intended to prohibit a physician
31 from providing any additional information which the physician

1 deems material to the woman's informed decision to terminate
2 her pregnancy.

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

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

20 (4) NOTIFICATION REQUIRED.--

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

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1 reasonable effort, the person or his or her agent must give 48
2 hours constructive notice.

3 (b) Notice shall not be required if:

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

14 2. Notice is waived in writing by the person who is
15 entitled to notice;

16 3. Notice is waived if the minor is or has been
17 married or has the disability of nonage removed pursuant to s.
18 743.015, or similar statutes of other states;

19 4. Notice is waived if the patient has a minor child
20 dependent on her; or

21 5. Notice is waived under the provisions of subsection
22 (5).

23 (c) Violation of this subsection by a physician
24 constitutes grounds for disciplinary action under s. 458.331
25 or s. 459.015.

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

27 (a) A minor may petition any circuit court for a
28 waiver of the notice requirements of subsection (4) and may
29 participate in proceedings on her own behalf. The petition
30 shall include a statement that the complainant is pregnant and
31 notice has not been waived. The court may appoint a guardian

1 ad litem for her. Any guardian ad litem appointed under this
2 subsection shall act to maintain the confidentiality of the
3 proceedings. The circuit court shall advise the minor that she
4 has a right to court-appointed counsel and shall provide her
5 with counsel upon her request. No county shall be obligated to
6 pay the fee, salary, costs, or expenses of any counsel
7 appointed by the court under this section.

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

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

3 (d) If the court finds, by clear and convincing
4 evidence, that there is evidence of child abuse or neglect, or
5 sexual abuse of the complainant by one or both of her parents,
6 her guardian, or her custodian, or that the notification of a
7 parent or guardian is not in the best interest of the
8 complainant, the court shall issue an order authorizing the
9 minor to consent to the performance or inducement of a
10 termination of pregnancy without the notification of a parent
11 or guardian. If the court does not make the finding specified
12 in this paragraph or paragraph (c), it shall dismiss the
13 petition.

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

21 (f) An expedited confidential appeal shall be
22 available, as the Supreme Court provides by rule, to any minor
23 to whom the circuit court denies a waiver of notice. An order
24 authorizing a termination of pregnancy without notice shall
25 not be subject to appeal.

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

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1 The requirements and procedures under this subsection are
2 available to minors whether or not they are residents of this
3 state.

4 (6)~~(4)~~ STANDARD OF MEDICAL CARE TO BE USED DURING
5 VIABILITY.--If a termination of pregnancy is performed during
6 viability, no person who performs or induces the termination
7 of pregnancy shall fail to use that degree of professional
8 skill, care, and diligence to preserve the life and health of
9 the fetus which such person would be required to exercise in
10 order to preserve the life and health of any fetus intended to
11 be born and not aborted. "Viability" means that stage of fetal
12 development when the life of the unborn child may with a
13 reasonable degree of medical probability be continued
14 indefinitely outside the womb. Notwithstanding the provisions
15 of this subsection, the woman's life and health shall
16 constitute an overriding and superior consideration to the
17 concern for the life and health of the fetus when such
18 concerns are in conflict.

19 (7)~~(5)~~ EXPERIMENTATION ON FETUS PROHIBITED;
20 EXCEPTION.--No person shall use any live fetus or live,
21 premature infant for any type of scientific, research,
22 laboratory, or other kind of experimentation either prior to
23 or subsequent to any termination of pregnancy procedure except
24 as necessary to protect or preserve the life and health of
25 such fetus or premature infant.

26 (8)~~(6)~~ FETAL REMAINS.--Fetal remains shall be disposed
27 of in a sanitary and appropriate manner and in accordance with
28 standard health practices, as provided by rule of the
29 department. Failure to dispose of fetal remains in accordance
30 with department rules is a misdemeanor of the second degree,
31 punishable as provided in s. 775.082 or s. 775.083.

1 (9)~~(7)~~ REFUSAL TO PARTICIPATE IN TERMINATION
2 PROCEDURE.--Nothing in this section shall require any hospital
3 or any person to participate in the termination of a
4 pregnancy, nor shall any hospital or any person be liable for
5 such refusal. No person who is a member of, or associated
6 with, the staff of a hospital, nor any employee of a hospital
7 or physician in which or by whom the termination of a
8 pregnancy has been authorized or performed, who shall state an
9 objection to such procedure on moral or religious grounds
10 shall be required to participate in the procedure which will
11 result in the termination of pregnancy. The refusal of any
12 such person or employee to participate shall not form the
13 basis for any disciplinary or other recriminatory action
14 against such person.

15 (10)~~(8)~~ EXCEPTION.--The provisions of this section
16 shall not apply to the performance of a procedure which
17 terminates a pregnancy in order to deliver a live child.

18 (11)~~(9)~~ PENALTIES FOR VIOLATION.--Except as provided
19 in subsections (3), (4), and (8)~~(6)~~:

20 (a) Any person who willfully performs, or actively
21 participates in, a termination of a pregnancy procedure in
22 violation of the requirements of this section commits a felony
23 of the third degree, punishable as provided in s. 775.082, s.
24 775.083, or s. 775.084.

25 (b) Any person who performs, or actively participates
26 in, a termination of a pregnancy procedure in violation of the
27 provisions of this section which results in the death of the
28 woman commits a felony of the second degree, punishable as
29 provided in s. 775.082, s. 775.083, or s. 775.084.

30 (12) PROCEEDINGS.--The Supreme Court is requested to
31 adopt rules to ensure that proceedings under this section are

1 handled in an expeditious and confidential manner and in a
2 manner which will satisfy the requirements of state and
3 federal courts.

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

10 Section 5. This act shall take effect July 1, 1999.