

By Senator Bronson

18-651A-99

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 terms; amending s. 390.0111,
5 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; prescribing notice requirements;
11 providing exceptions; prescribing procedure for
12 judicial waiver of notice; providing for notice
13 of right to counsel; providing for issuance of
14 a court order authorizing consent to a
15 termination of pregnancy without notification;
16 providing for dismissal of petitions; requiring
17 the issuance of written findings of fact and
18 legal conclusions; providing for expedited
19 appeal; providing for waiver of filing fees;
20 requesting the Supreme Court to adopt rules;
21 allowing legislative sponsors of this act to
22 intervene in certain legal actions; providing
23 for severability; providing an effective date.

24
25 WHEREAS, the Legislature finds that immature minors
26 often lack the ability to make fully informed choices that
27 take into account both immediate and long-range consequences,
28 and

29 WHEREAS, the medical, emotional, and psychological
30 consequences of abortion are sometimes serious and can be
31 lasting, particularly when the patient is immature, and

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 the 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, and

20 WHEREAS, previous legislation requiring the consent of
21 parents before a physician performed an abortion on their
22 daughter was struck down by the Florida Supreme Court on the
23 basis of the constitutional right of privacy, in the case of
24 In Re: T.W., and this legislation is designed to extend the
25 protection of the law to minor girls and their parents in
26 accordance with the State Constitution, NOW, THEREFORE,

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

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

1 Section 2. Section 390.011, Florida Statutes, 1998
2 Supplement, is amended to read:

3 390.011 Definitions.--As used in this chapter, the
4 term:

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

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

10 (a) A hospital; or

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

13 (3) "Actual notice" means notice that is given
14 directly, in person, or by telephone.

15 ~~(4)(3)~~ "Agency" means the Agency for Health Care
16 Administration.

17 (5) "Child abuse and neglect" has the meaning ascribed
18 in s. 415.503(3) and, as used in this chapter, refers to the
19 commission of acts set forth in s. 415.503(3) against a minor
20 by a family member as defined in s. 741.28(2).

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

25 ~~(7)(4)~~ "Department" means the Department of Health.

26 ~~(8)(5)~~ "Hospital" means a facility licensed under
27 chapter 395.

28 (9) "Medical emergency" means a condition that, on the
29 basis of a physician's good-faith clinical judgment, so
30 complicates the medical condition of a pregnant woman as to
31 necessitate the immediate termination of her pregnancy to

1 avert her death, or for which a delay in the termination of
2 her pregnancy will create serious risk of substantial and
3 irreversible impairment of a major bodily function.

4 (10)~~(6)~~ "Partial-birth abortion" means a termination
5 of pregnancy in which the physician performing the termination
6 of pregnancy partially vaginally delivers a living fetus
7 before killing the fetus and completing the delivery.

8 (11)~~(7)~~ "Physician" means a physician licensed under
9 chapter 458 or chapter 459 or a physician practicing medicine
10 or osteopathic medicine in the employment of the United
11 States.

12 (12) "Sexual abuse" has the meaning ascribed in s.
13 415.503(15) and, as used in this chapter, refers to the
14 commission of acts set forth in s. 415.503(15) against a minor
15 by a family member as defined in s. 741.28(2).

16 (13)~~(8)~~ "Third trimester" means the weeks of pregnancy
17 after the 24th week of pregnancy.

18 Section 3. Section 390.0111, Florida Statutes, 1998
19 Supplement, is 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 third 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 as defined in s. 390.011.

4 (3) CONSENTS REQUIRED.--A termination of pregnancy may
5 not be performed or induced except with the voluntary and
6 informed written consent of the pregnant woman or, if the
7 woman is mentally incompetent ~~in the case of a mental~~
8 ~~incompetent~~, the voluntary and informed written consent of her
9 court-appointed guardian.

10 (a) Except in the case of a medical emergency, consent
11 to a termination of pregnancy is voluntary and informed only
12 if:

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

16 a. The nature and risks of undergoing or not
17 undergoing the proposed procedure that a reasonable patient
18 would consider material to making a knowing and willful
19 decision of whether to terminate a pregnancy.

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

22 c. The medical risks to the woman and fetus of
23 carrying the pregnancy to term.

24 2. Printed materials prepared and provided by the
25 department have been provided to the pregnant woman, if she
26 chooses to view these materials, including:

27 a. A description of the fetus.

28 b. A list of agencies that offer alternatives to
29 terminating the pregnancy.

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1 c. Detailed information on the availability of medical
2 assistance benefits for prenatal care, childbirth, and
3 neonatal care.

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

7
8 ~~Nothing in~~ This paragraph is not intended to prohibit a
9 physician from providing any additional information that ~~which~~
10 the physician deems material to the woman's informed decision
11 to terminate her pregnancy.

12 (b) If ~~in the event~~ a medical emergency exists and a
13 physician cannot comply with the requirements for informed
14 consent, a physician may terminate a pregnancy if he or she
15 has obtained at least one corroborative medical opinion
16 attesting to the medical necessity for emergency medical
17 procedures and to the fact that to a reasonable degree of
18 medical certainty the continuation of the pregnancy would
19 threaten the life of the pregnant woman. If a ~~in the event no~~
20 second physician is unavailable ~~available~~ for a corroborating
21 opinion, the physician may proceed but shall document reasons
22 for the medical necessity in the patient's medical records.

23 (c) Violation of this subsection by a physician
24 constitutes grounds for disciplinary action under s. 458.331
25 or s. 459.015. Substantial compliance or reasonable belief
26 that compliance ~~complying~~ with the requirements of informed
27 consent would threaten the life or health of the patient is a
28 defense to any action brought under this paragraph.

29 (4) NOTIFICATION REQUIRED.--

30 (a) A termination of pregnancy may not be performed or
31 induced upon a minor unless the person performing or inducing

1 the termination of pregnancy has given at least 48 hours
2 actual notice to one parent or to the legal guardian of the
3 pregnant minor of his or her intention to perform or induce
4 the termination of pregnancy. The notice may be given by a
5 referring physician. The person who performs the termination
6 of pregnancy must receive the written statement of the
7 referring physician certifying that the referring physician
8 has given notice. If actual notice is not possible after a
9 reasonable effort has been made, the person or his or her
10 agent must give 48 hours' constructive notice.

11 (b) Notice is not required if:

12 1. A medical emergency exists and there is
13 insufficient time for the attending physician to comply with
14 the notification requirements. If a medical emergency exists,
15 the physician may terminate the pregnancy if he or she has
16 obtained at least one corroborative medical opinion attesting
17 to the medical necessity for emergency medical procedures. If
18 a second physician is unavailable to provide a corroborating
19 opinion, the physician may proceed but must document reasons
20 for the medical necessity in the patient's medical records;

21 2. Notice is waived in writing by the person who is
22 entitled to notice;

23 3. Notice is waived if the minor is or has been
24 married or has had the disability of nonage removed under s.
25 743.015 or a similar statute of another state;

26 4. Notice is waived because the patient has a minor
27 child dependent on her; or

28 5. Notice is waived under subsection (5).

29 (c) Violation of this subsection by a physician
30 constitutes grounds for disciplinary action under s. 458.331
31 or s. 459.015.

1 (5) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--
2 (a) A minor may petition any circuit court for a
3 waiver of the notice requirements of subsection (4) and may
4 participate in proceedings on her own behalf. The petition
5 must include a statement that the complainant is pregnant and
6 notice has not been waived. The court may appoint a guardian
7 ad litem for her. A guardian ad litem appointed under this
8 subsection shall act to maintain the confidentiality of the
9 proceedings. The circuit court shall advise the minor that she
10 has a right to court-appointed counsel and shall provide her
11 with counsel upon her request.
12 (b) Court proceedings under this section must be given
13 precedence over other pending matters to the extent necessary
14 to ensure that the court reaches a decision promptly. The
15 court shall rule, and issue written findings of fact and
16 conclusions of law, within 48 hours after the petition is
17 filed, except that the 48-hour limitation may be extended at
18 the request of the minor. If the court fails to rule within
19 the 48-hour period and an extension has not been requested,
20 the petition is granted, and the notice requirement is waived.
21 (c) If the court finds, by clear and convincing
22 evidence, that the minor is sufficiently mature to decide
23 whether to terminate her pregnancy, the court shall issue an
24 order authorizing the minor to consent to the performance or
25 inducement of a termination of pregnancy without the
26 notification of a parent or guardian. If the court does not
27 make the finding specified in this paragraph or paragraph (d),
28 it must dismiss the petition.
29 (d) If the court finds, by clear and convincing
30 evidence, that there is evidence of child abuse or neglect or
31 sexual abuse of the complainant by one or both of her parents,

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

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

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

23 (g) Filing fees are not required of any pregnant minor
24 who petitions a court for a waiver of parental notification
25 under this subsection at either the trial or the appellate
26 level.

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

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1 (6)~~(4)~~ STANDARD OF MEDICAL CARE TO BE USED DURING
2 VIABILITY.--If a termination of pregnancy is performed during
3 viability, no person who performs or induces the termination
4 of pregnancy shall fail to use that degree of professional
5 skill, care, and diligence to preserve the life and health of
6 the fetus which such person would be required to exercise in
7 order to preserve the life and health of any fetus intended to
8 be born and not aborted. As used in this subsection, the term
9 "viability" means that stage of fetal development when the
10 life of the unborn child may with a reasonable degree of
11 medical probability be continued indefinitely outside the
12 womb. Notwithstanding the provisions of this subsection, the
13 woman's life and health constitutes ~~shall constitute~~ an
14 overriding and superior consideration to the concern for the
15 life and health of the fetus when such concerns are in
16 conflict.

17 (7)~~(5)~~ PARTIAL-BIRTH ABORTION PROHIBITED; EXCEPTION.--

18 (a) A ~~No~~ physician may not ~~shall~~ knowingly perform a
19 partial-birth abortion.

20 (b) A woman upon whom a partial-birth abortion is
21 performed may not be prosecuted under this section for a
22 conspiracy to violate ~~the provisions of~~ this section.

23 (c) This subsection does ~~shall~~ not apply to a
24 partial-birth abortion that is necessary to save the life of a
25 mother whose life is endangered by a physical disorder,
26 illness, or injury, provided that no other medical procedure
27 would suffice for that purpose.

28 (8)~~(6)~~ EXPERIMENTATION ON FETUS PROHIBITED;

29 EXCEPTION.--A ~~No~~ person may not ~~shall~~ use any live fetus or
30 live, premature infant for any type of scientific, research,
31 laboratory, or other kind of experimentation either before or

1 ~~after~~ ~~prior to or subsequent to~~ any termination of pregnancy
2 procedure except as necessary to protect or preserve the life
3 and health of such fetus or premature infant.

4 (9)~~(7)~~ FETAL REMAINS.--Fetal remains shall be disposed
5 of in a sanitary and appropriate manner and in accordance with
6 standard health practices, as provided by rule of the
7 Department of Health. Failure to dispose of fetal remains in
8 accordance with department rules is a misdemeanor of the
9 second degree, punishable as provided in s. 775.082 or s.
10 775.083.

11 (10)~~(8)~~ REFUSAL TO PARTICIPATE IN TERMINATION
12 PROCEDURE.--~~Nothing in~~ This section does not ~~shall~~ require any
13 hospital or any person to participate in the termination of a
14 pregnancy, nor is ~~shall~~ any hospital or any person ~~be~~ liable
15 for such refusal. Neither a ~~No~~ person who is a member of, or
16 associated with, the staff of a hospital, nor any employee of
17 a hospital or physician in which or by whom the termination of
18 a pregnancy has been authorized or performed, who shall state
19 an objection to such procedure on moral or religious grounds
20 shall be required to participate in the procedure that ~~which~~
21 will result in the termination of pregnancy. The refusal of
22 any such person or employee to participate may not constitute
23 ~~shall not form~~ the basis for any disciplinary or other
24 recriminatory action against the ~~such~~ person.

25 (11)~~(9)~~ EXCEPTION.--~~The provisions of~~ This section
26 does ~~shall~~ not apply to the performance of a procedure that
27 ~~which~~ terminates a pregnancy in order to deliver a live child.

28 (12)~~(10)~~ PENALTIES FOR VIOLATION.--Except as provided
29 in subsections (3), (4), and (8)~~(7)~~:

30 (a) Any person who willfully performs, or actively
31 participates in, a termination of pregnancy procedure in

1 violation ~~of the requirements~~ of this section commits a felony
2 of the third degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

4 (b) Any person who performs, or actively participates
5 in, a termination of pregnancy procedure in violation ~~of the~~
6 ~~provisions~~ of this section which results in the death of the
7 woman commits a felony of the second degree, punishable as
8 provided in s. 775.082, s. 775.083, or s. 775.084.

9 (13)~~(11)~~ CIVIL ACTION PURSUANT TO PARTIAL-BIRTH
10 ABORTION; RELIEF.--

11 (a) The father, if married to the mother at the time
12 she receives a partial-birth abortion, and, if the mother has
13 not attained the age of 18 years at the time she receives a
14 partial-birth abortion, the maternal grandparents of the fetus
15 may, in a civil action, obtain appropriate relief, unless the
16 pregnancy resulted from the plaintiff's criminal conduct or
17 the plaintiff consented to the abortion.

18 (b) In a civil action under this section, appropriate
19 relief includes:

20 1. Monetary damages for all injuries, psychological
21 and physical, occasioned by the violation of subsection (5).

22 2. Damages equal to three times the cost of the
23 partial-birth abortion.

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

28 Section 4. Any member of the Legislature of the State
29 of Florida who sponsored or cosponsored this act has the right
30 to intervene in any legal action challenging the
31 constitutionality of this act.

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Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the 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 declared severable.

Section 6. This act shall take effect July 1, 1999.

SENATE SUMMARY

Creates the "Parental Notice of Abortion Act." Revises provisions relating to terminating pregnancies. Prohibits performing or inducing a termination of pregnancy upon a minor without giving specified notice. Provides for disciplinary action for violations. Provides notice requirements. Provides exceptions. Provides a procedure for the judicial waiver of notice. Provides for notice of right to counsel. Provides for the issuance of a court order authorizing consent to a termination of pregnancy without notification. Provides for the dismissal of a petition. Requires the issuance of written findings of fact and legal conclusions. Provides for expedited appeal. Provides for waiving filing fees. Requests the Supreme Court to adopt rules. Allows legislative sponsors or cosponsors of this act to intervene in any legal action challenging the constitutionality of the act.