

1 A bill to be entitled
2 An act relating to termination of pregnancies;
3 creating s. 390.01115, F.S.; providing a short
4 title; defining terms; prohibiting the
5 performing or inducement of a termination of
6 pregnancy upon a minor without specified
7 notice; providing disciplinary action for
8 violation; prescribing notice requirements;
9 providing exceptions; prescribing procedure for
10 judicial waiver of notice; providing for notice
11 of right to counsel; providing for issuance of
12 a court order authorizing consent to a
13 termination of pregnancy without notification;
14 providing for dismissal of petitions; requiring
15 the issuance of written findings of fact and
16 legal conclusions; providing for expedited
17 appeal; providing for waiver of filing fees and
18 court costs; precluding assumption of certain
19 expenses by counties; requesting the Supreme
20 Court to adopt rules; requiring the Supreme
21 Court to report annually to the Governor and
22 the Legislature; providing for severability;
23 providing an effective date.

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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 unique medical, emotional, and
30 psychological consequences of abortion are sometimes serious

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1 and can be lasting, particularly when the patient is immature,
2 and

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

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

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

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

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

22 WHEREAS, further legislative purposes are to ensure
23 that parents are able to meet their high duty to seek out and
24 follow medical advice pertaining to their children, stay
25 apprised of the medical needs and physical condition of their
26 children, and recognize complications that might arise
27 following medical procedures or services, to preserve the
28 right of parents to pursue a civil action on behalf of their
29 child before expiration of the statute of limitations period,
30 if a facility or physician commits medical malpractice that
31 results in injury to a child, and to prevent, detect, and

1 prosecute batteries, rapes, and other crimes committed upon
2 minors, and

3 WHEREAS, previous legislation requiring the consent of
4 parents before a physician performed an abortion on their
5 daughter was struck down by the Florida Supreme Court on the
6 basis of the constitutional right of privacy, in the case of
7 In Re: T.W., and this legislation is designed to extend the
8 protection of the law to minor girls and their parents in
9 accordance with the State Constitution, NOW, THEREFORE,

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

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13 Section 1. Section 390.01115, Florida Statutes, is
14 created to read:

15 390.01115 Parental Notice of Abortion Act.--

16 (1) SHORT TITLE.--This section may be cited as the
17 "Parental Notice of Abortion Act."

18 (2) DEFINITIONS.--As used in this section, the term:

19 (a) "Actual notice" means notice that is given
20 directly, in person, or by telephone.

21 (b) "Child abuse" has the meaning ascribed in s.
22 39.0015(3) and refers to the acts of child abuse against a
23 minor by a family member as defined in s. 741.28(2).

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

28 (d) "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 (e) "Sexual abuse" has the meaning ascribed in s.
5 39.01 and refers to the acts of sexual abuse against a minor
6 by a family member as defined in s. 741.28(2).

7 (3) NOTIFICATION REQUIRED.--

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

20 (b) Notice is not required if:

21 1. A medical emergency exists and there is
22 insufficient time for the attending physician to comply with
23 the notification requirements. If a medical emergency exists,
24 the physician may proceed but must document reasons for the
25 medical necessity in the patient's medical records;

26 2. Notice is waived in writing by the person who is
27 entitled to notice;

28 3. Notice is waived by the minor who is or has been
29 married or has had the disability of nonage removed under s.
30 743.015 or a similar statute of another state;

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1 4. Notice is waived by the patient because the patient
2 has a minor child dependent on her; or

3 5. Notice is waived under subsection (4).

4 (c) Violation of this subsection by a physician
5 constitutes grounds for disciplinary action under s. 458.331
6 or s. 459.015.

7 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

8 (a) A minor may petition any circuit court for a
9 waiver of the notice requirements of subsection (3) and may
10 participate in proceedings on her own behalf. The petition
11 must include a statement that the petitioner is pregnant and
12 notice has not been waived. The court may appoint a guardian
13 ad litem for her. A guardian ad litem appointed under this
14 subsection shall act to maintain the confidentiality of the
15 proceedings. The circuit court shall advise the minor that she
16 has a right to court-appointed counsel and shall provide her
17 with counsel upon her request.

18 (b) Court proceedings under this subsection must be
19 given precedence over other pending matters to the extent
20 necessary to ensure that the court reaches a decision
21 promptly. The court shall rule, and issue written findings of
22 fact and conclusions of law, within 48 hours after the
23 petition is filed, except that the 48-hour limitation may be
24 extended at the request of the minor. If the court fails to
25 rule within the 48-hour period and an extension has not been
26 requested, the petition is granted, and the notice requirement
27 is waived.

28 (c) If the court finds, by clear evidence, that the
29 minor is sufficiently mature to decide whether to terminate
30 her pregnancy, the court shall issue an order authorizing the
31 minor to consent to the performance or inducement of a

1 termination of pregnancy without the notification of a parent
2 or guardian. If the court does not make the finding specified
3 in this paragraph or paragraph (d), it must dismiss the
4 petition.

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

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

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

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

3 (h) No county shall be obligated to pay the salaries,
4 costs, or expenses of any counsel appointed by the court under
5 this subsection.

6 (5) PROCEEDINGS.--The Supreme Court is requested to
7 adopt rules and forms for petitions to ensure that proceedings
8 under subsection (4) are handled expeditiously and in a manner
9 that will satisfy the requirements of state and federal
10 courts.

11 (6) REPORT.--The Supreme Court, through the Office of
12 the State Courts Administrator, shall report by February 1 of
13 each year to the Governor, the President of the Senate, and
14 the Speaker of the House of Representatives on the number of
15 petitions filed under subsection (4) for the preceding year,
16 and the timing and manner of disposal of such petitions by
17 each circuit court.

18 Section 2. If any provision of this act or the
19 application thereof to any person or circumstance is held
20 invalid, the invalidity shall not affect other provisions or
21 applications of the act which can be given effect without the
22 invalid provision or application, and to this end the
23 provisions of this act are declared severable.

24 Section 3. This act shall take effect July 1, 1999.
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