

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SJR 2178

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Diaz de la Portilla

SUBJECT: Pregnant Minor's Parent/Notification

DATE: March 9, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Senate Joint Resolution proposes the creation of Section 22 of Article X of the State Constitution to require a physician to notify the parent or guardian of a pregnant minor at least 48 hours before the physician terminates the minor's pregnancy. The joint resolution provides conditions under which notice will not be required, provides for judicial bypass, and provides conditions that must be met by the court in judicial proceedings.

This bill proposes the creation of section 22 in Article X of the Florida Constitution.

II. Present Situation:

Joint Resolutions to Amend the State Constitution

Under Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, pursuant to Article XI, section 5.

Ballot Statement

Section 101.161, F.S., requires that whenever a constitutional amendment is submitted to the vote of the people, the substance of the amendment must be printed in clear and unambiguous

language on the ballot. The wording of the substance of the amendment and the ballot title to appear on the ballot must be embodied in the joint resolution.

Parental Notification Laws

Twenty-one states have enacted parental notification laws which require that a parent be notified before a pregnant minor may undergo a termination of the pregnancy. In six of the states, the law has been blocked by a court or was otherwise not enforced.

The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours' actual notice to one parent or to the legal guardian of a pregnant minor before terminating the pregnancy of the minor. The act provides a procedure for judicial waiver. This act was never enforced. Both the trial and district courts barred implementation of the act because of concerns regarding its constitutionality. The act¹ was declared unconstitutional by the Florida Supreme Court in 2003 on the grounds that it violated a minor's right to privacy under Article I, section 23 of the State Constitution.²

The controlling law in the Supreme Court's review of this statute in *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, was *In re: T.W.*,³ and the court found that in this case, as in *In re: T.W.*, the government failed to provide a compelling state interest for intruding upon the privacy rights of the minor. The Supreme Court approved the trial court's decision permanently enjoining enforcement of the Parental Notice of Abortion Act.

Right to Privacy

Only ten states have privacy provisions in their constitutions. Florida's Constitution provides for a right to privacy in Article I, section 23, as follows:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Florida Supreme Court has held that the express right of privacy in Article I, section 23 of the State Constitution provides broader protection than that afforded by the U.S. Constitution.⁴ Therefore, any state regulation of a fundamental right is subject to the higher standard of review, i.e., strict scrutiny. The Florida Supreme Court has held that the right of privacy is "clearly implicated in a woman's decision of whether or not to continue her pregnancy."⁵ Therefore, proponents of a parental notification law in Florida are seeking to create an exception to this right of privacy for a minor who seeks an abortion. In Florida, a Constitutional amendment would appear to be the only avenue for establishing such a law.

¹ See s. 390.01115, F.S.

² *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida* (2003 WL 21546546 (Fla.))

³ *In re: T.W.*, 551 So.2d 1186, 1192 (1989)

⁴ See *Winfield v. Division of Pari-Mutual Wagering*, 477 So.2d 544 (Fla. 1985)

⁵ *In re: T.W.*, 551 So.2d 1186, 1192 (1989)

III. Effect of Proposed Changes:

This Senate Joint Resolution proposes the creation of section 22 of Article X of the State Constitution to require a physician to notify the parent or guardian of a pregnant minor at least 48 hours before the physician terminates the minor's pregnancy. Notwithstanding the right of privacy provided in Article I, section 23 of the State Constitution, the Legislature will be required to enact the requirement for parental notification by general law.

Parental notification will not be required if:

- A medical emergency exists and there is insufficient time for the physician to notify the parent or guardian;
- The minor is or has been married or has had the disability of nonage removed; or
- A circuit court has waived the notice based upon any of the following grounds:
 - There is evidence of child abuse or sexual abuse of the minor by one or both of the minor's parents, by the guardian, or by a family member or a resident of the home where the minor resides, or
 - The notification of a parent or guardian is not in the best interest of the minor.

If a judicial proceeding is brought based on the grounds cited above, it will be a confidential proceeding and the court must do the following:

- Give the proceeding precedence over other matters to ensure that the court reaches a decision promptly;
- Maintain written transcripts of all testimony and proceedings;
- Provide for an expedited and confidential appeal; and
- Waive any requirements for filing fees or court costs.

As required by s. 101.161, F.S., the bill provides the following statement to be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 22

*PARENTAL NOTIFICATION OF A MINOR'S TERMINATION OF PREGNANCY.--
Proposing an amendment to the State Constitution stipulating that the Legislature, notwithstanding the constitutional right of privacy, enact legislation requiring a physician to notify the parent or guardian of a pregnant minor at least 48 hours before terminating the minor's pregnancy; providing that such notification is not required if a documented medical emergency exists and there is insufficient time to provide notice, if the minor is or has been married or has had the disability of nonage removed, or if the circuit court waives the notice requirement based on a finding of child abuse or sexual abuse by the parent or guardian of the minor or finds that such notification is not in the best interest of the minor; and requiring that any court proceeding be expeditious and confidential, that written transcripts be maintained, and that filing fees and court costs be waived.*

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Under Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless, under the provisions in Article X, section 5, it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

This joint resolution requires an affirmative vote of three-fifths of the membership of the Senate and of the House of Representatives for passage. However, if the Legislature intended that this proposal be submitted to the electors at a special election prior to the general election, three-fourths of the membership of each house would be required to approve the joint resolution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Physicians would incur the cost of notifying a parent or guardian before each termination of the pregnancy of a minor.

C. Government Sector Impact:

The cost to state government is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
