

Bill No. HB 1659, 1st Eng.

Barcode 142064

CHAMBER ACTION

Senate

House

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2	05/05/2005 04:27 PM	.	05/06/2005 15:30:56
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11 Senator Dockery moved the following amendment:

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Senate Amendment (with title amendment)

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Delete everything after the enacting clause

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16 and insert:

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Section 1. Section 390.01115, Florida Statutes, is

18

repealed.

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Section 2. Section 390.01114, Florida Statutes, is

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created to read:

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390.01114 Parental Notice of Abortion Act.--

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(1) SHORT TITLE.--This section may be cited as the

23

"Parental Notice of Abortion Act."

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

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(a) "Actual notice" means notice that is given

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directly, in person or by telephone, to a parent or legal

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guardian of a minor, by a physician, at least 48 hours before

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the inducement or performance of a termination of pregnancy,

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and documented in the minor's files.

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(b) "Child abuse" has the same meaning as s.

31

39.0015(3).

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1 (c) "Constructive notice" means notice that is given
2 in writing, signed by the physician, and mailed at least 72
3 hours before the inducement or performance of the termination
4 of pregnancy, to the last known address of the parent or legal
5 guardian of the minor, by certified mail, return receipt
6 requested, and delivery restricted to the parent or legal
7 guardian. After the 72 hours have passed, delivery is deemed
8 to have occurred.

9 (d) "Medical emergency" means a condition that, on the
10 basis of a physician's good faith clinical judgment, so
11 complicates the medical condition of a pregnant woman as to
12 necessitate the immediate termination of her pregnancy to
13 avert her death, or for which a delay in the termination of
14 her pregnancy will create serious risk of substantial and
15 irreversible impairment of a major bodily function.

16 (e) "Sexual abuse" has the meaning ascribed in s.
17 39.01.

18 (f) "Minor" means a person under the age of 18 years.

19 (3) NOTIFICATION REQUIRED.--

20 (a) Actual notice shall be provided by the physician
21 performing or inducing the termination of pregnancy before the
22 performance or inducement of the termination of the pregnancy
23 of a minor. The notice may be given by a referring physician.
24 The physician who performs or induces the termination of
25 pregnancy must receive the written statement of the referring
26 physician certifying that the referring physician has given
27 notice. If actual notice is not possible after a reasonable
28 effort has been made, the physician performing or inducing the
29 termination of pregnancy or the referring physician must give
30 constructive notice. Notice given under this subsection by the
31 physician performing or inducing the termination of pregnancy

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1 must include the name and address of the facility providing
 2 the termination of pregnancy, the name of the physician
 3 providing notice. Notice given under this subsection by a
 4 referring physician must include the name and address of the
 5 facility where he or she is referring the minor and the name
 6 of the physician providing notice. If actual notice is
 7 provided by telephone, the physician must actually speak with
 8 the parent or guardian, and must record in the minor's medical
 9 file the name of the parent or guardian provided notice, the
 10 phone number dialed, and the date and time of the call. If
 11 constructive notice is given, the physician must document that
 12 notice by placing copies of any document related to the
 13 constructive notice, including, but not limited to, a copy of
 14 the letter and the return receipt, in the minor's medical
 15 file.

16 (b) Notice is not required if:

17 1. In the physician's good-faith clinical judgment, a
 18 medical emergency exists and there is insufficient time for
 19 the attending physician to comply with the notification
 20 requirements. If a medical emergency exists, the physician may
 21 proceed but must document reasons for the medical necessity in
 22 the patient's medical records;

23 2. Notice is waived in writing by the person who is
 24 entitled to notice;

25 3. Notice is waived by the minor who is or has been
 26 married or has had the disability of nonage removed under s.
 27 743.015 or a similar statute of another state;

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

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

31 (c) Violation of this subsection by a physician

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1 constitutes grounds for disciplinary action under s. 458.331
2 or s. 459.015.

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

4 (a) A minor may petition any circuit court in a
5 judicial circuit within the jurisdiction of the District Court
6 of Appeal in which she resides for a waiver of the notice
7 requirements of subsection (3) and may participate in
8 proceedings on her own behalf. The petition may be filed under
9 a pseudonym or through the use of initials, as provided by
10 court rule. The petition must include a statement that the
11 petitioner is pregnant and notice has not been waived. The
12 court shall advise the minor that she has a right to
13 court-appointed counsel and shall provide her with counsel
14 upon her request at no cost to the minor.

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

1 it must dismiss the petition.

2 (d) If the court finds, by a preponderance of the
3 evidence, that there is evidence of child abuse or sexual
4 abuse of the petitioner by one or both of her parents or her
5 guardian, or that the notification of a parent or guardian is
6 not in the best interest of the petitioner, the court shall
7 issue an order authorizing the minor to consent to the
8 performance or inducement of a termination of pregnancy
9 without the notification of a parent or guardian. If the court
10 finds evidence of child abuse or sexual abuse of the minor
11 petitioner by any person, the court shall report the evidence
12 of child abuse or sexual abuse of the petitioner, as provided
13 in s. 39.201. If the court does not make the finding specified
14 in this paragraph or paragraph (c), it must dismiss the
15 petition.

16 (e) A court that conducts proceedings under this
17 section shall provide for a written transcript of all
18 testimony and proceedings and issue written and specific
19 factual findings and legal conclusions supporting its decision
20 and shall order that a confidential record be maintained, as
21 required under s. 390.01116. At the hearing, the court shall
22 hear evidence relating to the emotional development, maturity,
23 intellect, and understanding of the minor, and all other
24 relevant evidence. All hearings under this section, including
25 appeals, shall remain confidential and closed to the public,
26 as provided by court rule.

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

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

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

8 (5) PROCEEDINGS.--The Supreme Court is requested to
9 adopt rules and forms for petitions to ensure that proceedings
10 under subsection (4) are handled expeditiously and in a manner
11 consistent with this act. The Supreme Court is also requested
12 to adopt rules to ensure that the hearings protect the minor's
13 confidentiality and the confidentiality of the proceedings.

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

21 Section 3. This act shall take effect upon the
22 adoption of rules and forms by the Supreme Court, but no later
23 than July 1, 2005.

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26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete everything before the enacting clause

29

30 and insert:

31 A bill to be entitled

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1 An act relating to the termination of
2 pregnancies; repealing s. 390.01115, F.S.,
3 relating to the Parental Notice of Abortion
4 Act; creating s. 390.01114, F.S.; creating the
5 Parental Notice of Abortion Act; providing a
6 short title; defining terms; 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 requiring certain information to be recorded in
12 the medical file of the minor; providing
13 exceptions to the notice requirements;
14 prescribing a procedure for judicial waiver of
15 notice; providing for notice of right to
16 counsel; providing for issuance of a court
17 order authorizing consent to a termination of
18 pregnancy without notification; providing for
19 dismissal of petitions; requiring the issuance
20 of written findings of fact and legal
21 conclusions; providing for confidential and
22 closed hearings; providing for expedited
23 appeal; providing for waiver of filing fees and
24 court costs; precluding assumption of certain
25 expenses by counties; requesting the Supreme
26 Court to adopt rules; requiring the Supreme
27 Court to report annually to the Governor and
28 the Legislature; providing a contingent
29 effective date.

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