

1 A bill to be entitled

2 An act relating to parental notification of termination of
3 a minor's pregnancy; amending s. 390.01115, F.S.; revising
4 the popular name; revising and providing definitions;
5 removing the distinction between actual notice and
6 constructive notice; providing that notice shall be given
7 by the physician who will perform the termination of
8 pregnancy procedure; deleting provisions allowing waiver
9 of notice under certain circumstances; providing that
10 violation of the notice requirements by physicians shall
11 be considered medical malpractice; providing a minimum age
12 requirement for minors who petition for a waiver of
13 notice; providing for a petition for a waiver of notice to
14 be filed in the circuit court in the county where the
15 minor resides; revising the deadline by when the circuit
16 court shall issue rulings on notice proceedings; removing
17 a provision allowing a minor to request to extend the
18 deadline; removing a provision for the notice requirement
19 to be waived should the court fail to meet the deadline;
20 revising evidentiary standards for certain notice
21 proceedings; revising evidentiary findings needed by the
22 court relating to abuse of a minor; requiring the court to
23 report evidence of child abuse; revising provisions
24 relating to Supreme Court rules on petitions and appeals;
25 deleting a requirement of the Supreme Court to report on
26 petitions to waive notice; providing an effective date.

27
28 WHEREAS, the Legislature finds that parents of children in

29 | the State of Florida have a fundamental right to raise their
 30 | children free from unnecessary government interference, and

31 | WHEREAS, the Legislature took testimony from citizens from
 32 | all over the State of Florida who overwhelmingly believe that a
 33 | parent's right to know when their child is undergoing a serious
 34 | medical procedure supersedes any implied right of privacy in the
 35 | State Constitution, including the right to be notified before
 36 | the termination of a minor child's pregnancy, and

37 | WHEREAS, the citizens of Florida amended the State
 38 | Constitution in 2004 and authorized the Legislature to require
 39 | notice to parents or guardians of minors before termination of
 40 | their minor child's pregnancy, and

41 | WHEREAS, the Parental Notice of the Termination of a
 42 | Minor's Pregnancy Act of 2005 is necessary to protect the
 43 | fundamental right of parents to raise their children free from
 44 | unnecessary government interference and to comply with the
 45 | mandate of the citizens of Florida, NOW, THEREFORE,

46 |

47 | Be It Enacted by the Legislature of the State of Florida:

48 |

49 | Section 1. Section 390.01115, Florida Statutes, is amended
 50 | to read:

51 | 390.01115 Parental Notice of the Termination of a Minor's
 52 | Pregnancy ~~Abortion~~ Act of 2005.--

53 | (1) POPULAR NAME ~~SHORT-TITLE~~.--This section may be cited
 54 | as the "Parental Notice of the Termination of a Minor's
 55 | Pregnancy ~~Abortion~~ Act of 2005."

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

57 ~~(a) "Actual notice" means notice that is given directly,~~
58 ~~in person, or by telephone.~~

59 (a)(b) "Child abuse" has the meaning ascribed in s.
60 39.0015(3) and refers to the acts of child abuse against a minor
61 by a family member as defined in s. 741.28.

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

66 (b)(d) "Medical emergency" means a condition that, on the
67 ~~basis of a physician's~~ good faith clinical judgment of a
68 physician treating a minor, so complicates the medical condition
69 of a pregnant minor woman as to necessitate the immediate
70 termination of the minor's ~~her~~ pregnancy to avert her death, or
71 for which a delay in the termination of her pregnancy will
72 create certain ~~serious~~ risk of substantial and irreversible
73 impairment of a major bodily function.

74 (c) "Notice" means notice that is given by certified mail,
75 return receipt requested, to a parent or legal guardian of a
76 pregnant minor or notice that is given by direct in-person
77 communication with a parent or guardian of a pregnant minor.

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

81 (3) NOTIFICATION REQUIRED.--

82 (a) A termination of the pregnancy of a minor may not be
83 performed or induced upon a minor unless the physician
84 performing or inducing the termination of the pregnancy has

85 given at least 48 hours' ~~actual notice to one parent or to the~~
 86 ~~legal guardian of the pregnant minor of~~ the physician's ~~his or~~
 87 ~~her~~ intention to perform or induce the termination of the
 88 pregnancy to one parent or the legal guardian of the pregnant
 89 minor. The notice shall ~~may~~ be given by a ~~referring physician.~~
 90 the physician who will perform ~~performs~~ the termination of
 91 pregnancy procedure ~~must receive the written statement of the~~
 92 ~~referring physician certifying that the referring physician has~~
 93 ~~given notice. If actual notice is not possible after a~~
 94 ~~reasonable effort has been made, the physician or his or her~~
 95 ~~agent must give 48 hours' constructive notice.~~

96 (b) Notice is not required if:

97 1. A medical emergency exists and there is insufficient
 98 time for the attending physician to comply with the notification
 99 requirements of this subsection. If a medical emergency exists,
 100 the physician may proceed with the termination of pregnancy
 101 procedure but must document reasons for the medical necessity in
 102 the patient's medical records and must thereafter provide notice
 103 pursuant to paragraph (a); or

104 ~~2. Notice is waived in writing by the person who is~~
 105 ~~entitled to notice;~~

106 ~~2.3.~~ Notice is waived by the minor who is or has been
 107 married or has had the disability of nonage removed under s.
 108 743.015 or a similar valid and in force statute of another
 109 state;

110 ~~4. Notice is waived by the patient because the patient has~~
 111 ~~a minor child dependent on her; or~~

112 ~~5. Notice is waived under subsection (4).~~

113 (c) Violation of this subsection by a physician
 114 constitutes grounds for disciplinary action under s. 458.331 or
 115 s. 459.015 and shall be considered an act of medical
 116 malpractice.

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

118 (a) A pregnant minor who is 14 years of age or older may
 119 petition the any circuit court in the county where she resides
 120 for a waiver of the notice requirements of subsection (3) and
 121 may participate in proceedings on her own behalf. The petition
 122 must include a statement that the petitioner is pregnant and
 123 notice has not been waived. The court may appoint a guardian ad
 124 litem for the minor ~~her~~. A guardian ad litem appointed under
 125 this subsection shall act to maintain the confidentiality of the
 126 proceedings. The circuit court shall advise the minor that she
 127 has a right to court-appointed counsel and shall provide the
 128 minor ~~her~~ with counsel upon the minor's ~~her~~ request.

129 (b) Court proceedings under this subsection must be given
 130 precedence over other pending matters to the extent necessary to
 131 ensure that the circuit court reaches a prompt decision
 132 ~~promptly~~. The circuit court shall rule, and issue written
 133 findings of fact and conclusions of law, no later than 7 days
 134 from the date the minor's ~~within 48 hours after the~~ petition is
 135 filed, ~~except that the 48-hour limitation may be extended at the~~
 136 ~~request of the minor. If the court fails to rule within the 48-~~
 137 ~~hour period and an extension has not been requested, the~~
 138 ~~petition is granted, and the notice requirement is waived.~~

139 (c) If the court finds, by clear and convincing evidence,
 140 that the minor is sufficiently mature to decide whether to

141 terminate her pregnancy without the knowledge of her parent or
 142 guardian of the decision to terminate the pregnancy, the court
 143 shall issue an order authorizing the minor to consent to the
 144 performance or inducement of a termination of pregnancy without
 145 providing the notification to the minor's ~~of a parent or~~
 146 guardian. If the court does not make the finding specified in
 147 this paragraph or paragraph (d), it must dismiss the petition.

148 (d) If the court finds, by the greater weight of the clear
 149 evidence, that the minor has been the victim ~~there is evidence~~
 150 of child abuse or sexual abuse, including, but not limited to,
 151 rape or incest that resulted in the minor becoming pregnant of
 152 the petitioner by one or both of her parents or her guardian, or
 153 that the notification of a parent or guardian is not in the best
 154 interest of the petitioner, the court shall issue an order
 155 authorizing the minor to consent to the performance or
 156 inducement of a termination of pregnancy without the
 157 notification of a parent or guardian. If the court does not make
 158 the finding specified in this paragraph or paragraph (c), it
 159 must dismiss the petition. If the court does make the finding
 160 specified in this paragraph, in addition to an order authorizing
 161 termination the court shall report evidence of child abuse or
 162 sexual abuse of the minor petitioner to the appropriate agency
 163 or law enforcement agency.

164 (e) A court that conducts proceedings under this section
 165 shall provide for a written transcript of all testimony and
 166 proceedings and issue written and specific factual findings and
 167 legal conclusions supporting its decision and shall order that
 168 the a ~~confidential~~ record of the proceedings remain confidential

169 ~~evidence and the judge's findings and conclusions be maintained.~~
 170 In determining whether a minor is sufficiently mature to decide
 171 whether to terminate her pregnancy without the knowledge of her
 172 parent or guardian of the decision to terminate her pregnancy ~~At~~
 173 ~~the hearing,~~ the court shall consider all relevant evidence,
 174 including ~~hear~~ evidence relating to the minor's emotional
 175 development, maturity, intellect, and understanding of the
 176 consequences of her actions ~~minor.~~

177 (f) An expedited confidential appeal shall be available,
 178 as the Supreme Court provides by rule consistent with this act,
 179 to any minor to whom the circuit court denies a waiver of notice
 180 to her parent or guardian. An order authorizing the minor's a
 181 termination of pregnancy without notice to a parent or guardian
 182 is not subject to appeal.

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

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

190 (5) PROCEEDINGS.--The Supreme Court is requested to adopt
 191 rules and forms for petitions to ensure that proceedings under
 192 subsection (4) are handled expeditiously and in a manner
 193 consistent with that will satisfy the requirements of state and
 194 federal law courts.

195 ~~(6) REPORT.--The Supreme Court, through the Office of the~~
 196 ~~State Courts Administrator, shall report by February 1 of each~~

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197 ~~year to the Governor, the President of the Senate, and the~~
198 ~~Speaker of the House of Representatives on the number of~~
199 ~~petitions filed under subsection (4) for the preceding year, and~~
200 ~~the timing and manner of disposal of such petitions by each~~
201 ~~circuit court.~~

202 Section 2. This act shall take effect July 1, 2005.