

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

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24 | revising evidentiary standards for certain notice
 25 | proceedings; revising evidentiary findings needed by the
 26 | court relating to abuse of a minor; requiring the court to
 27 | report evidence of child abuse; revising provisions
 28 | relating to Supreme Court rules on petitions and appeals;
 29 | deleting a requirement of the Supreme Court to report on
 30 | petitions to waive notice; providing an effective date.
 31 |

32 | WHEREAS, the Legislature finds that parents of children in
 33 | the State of Florida have a fundamental right to raise their
 34 | children free from unnecessary government interference, and

35 | WHEREAS, the United States Supreme Court has confirmed in
 36 | H.L. v. Matheson, 450 U.S. 398 (1981), that states further a
 37 | constitutionally permissible end by encouraging unmarried
 38 | pregnant minors to seek the help and advice of their parents in
 39 | making the important decision whether or not to bear a child,
 40 | and

41 | WHEREAS, the Florida Supreme Court's rationale in In re
 42 | T.W., 551 So. 2d 1186 (Fla. 1989) and North Florida Women's
 43 | Health and Counseling Services v. State, 886 So. 2d 612 (Fla.
 44 | 2003), is contrary to the rationale of the United States Supreme
 45 | Court in H.L. v. Matheson, and

46 | WHEREAS, the Legislature took testimony from citizens from
 47 | all over the State of Florida who overwhelmingly believe that a
 48 | parent's right to know when their child is undergoing a serious
 49 | medical procedure supersedes any implied right of privacy in the
 50 | State Constitution, including the right to be notified before
 51 | the termination of a minor child's pregnancy notwithstanding a

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52 | minor's right to privacy provided in Article I, Section 23 of
53 | the Florida Constitution, and

54 | WHEREAS, the citizens of Florida amended the State
55 | Constitution in 2004 and authorized the Legislature to require
56 | notice to parents or guardians of minors before termination of
57 | their minor child's pregnancy, and

58 | WHEREAS, the Parental Notice of the Termination of a
59 | Minor's Pregnancy Act of 2005 is necessary to protect the
60 | fundamental right of parents to raise their children free from
61 | unnecessary government interference and to comply with the
62 | mandate of the citizens of Florida, NOW, THEREFORE,

63 |

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

65 |

66 | Section 1. Section 390.01115, Florida Statutes, is amended
67 | to read:

68 | 390.01115 Parental Notice of the Termination of a Minor's
69 | Pregnancy ~~Abortion~~ Act of 2005.--

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

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

74 | ~~(a) "Actual notice" means notice that is given directly,~~
75 | ~~in person, or by telephone.~~

76 | (a)(b) "Child abuse" has the meaning ascribed in s.
77 | 39.0015(3) and refers to the acts of child abuse against a minor
78 | by a family member as defined in s. 741.28.

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

83 ~~(b)(d)~~ "Medical emergency" means a condition that, on the
 84 ~~basis of a physician's~~ good faith clinical judgment of a
 85 physician treating a minor, so complicates the medical condition
 86 of a pregnant minor woman as to necessitate the immediate
 87 termination of the minor's ~~her~~ pregnancy to avert her death, or
 88 for which a delay in the termination of her pregnancy will
 89 create certain ~~serious~~ risk of substantial and irreversible
 90 impairment of a major bodily function.

91 (c) "Notice" means direct in-person communication with a
 92 parent or legal guardian or, if direct in-person communication
 93 is not possible, by certified mail, return-receipt requested, to
 94 a parent or legal guardian.

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

98 (3) NOTIFICATION REQUIRED.--

99 (a) A termination of the pregnancy of a minor may not be
 100 performed or induced upon a minor unless the physician
 101 performing or inducing the termination of the pregnancy has
 102 given, and, if notice was mailed, received return-receipt
 103 confirmation, at least 48 hours' ~~actual notice to one parent or~~
 104 ~~to the legal guardian of the pregnant minor of the physician's~~
 105 ~~his or her~~ intention to perform or induce the termination of the
 106 pregnancy to one parent or the legal guardian of the pregnant

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107 minor. The notice shall ~~may~~ be given by ~~a referring physician.~~
 108 the physician who will perform ~~performs~~ the termination of
 109 pregnancy procedure ~~must receive the written statement of the~~
 110 ~~referring physician certifying that the referring physician has~~
 111 ~~given notice. If actual notice is not possible after a~~
 112 ~~reasonable effort has been made, the physician or his or her~~
 113 ~~agent must give 48 hours' constructive notice.~~

114 (b) Prior notice is not required if:

115 1. A medical emergency exists and there is insufficient
 116 time for the attending physician to comply with the notification
 117 requirements of this subsection. If a medical emergency exists,
 118 the physician may proceed with the termination of pregnancy
 119 procedure but must document reasons for the medical necessity in
 120 the patient's medical records and must thereafter provide notice
 121 as defined in paragraph (2)(c) within 24 hours after the
 122 procedure is performed; or

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

125 ~~2.3.~~ Notice is waived by the minor who is or has been
 126 married or has had the disability of nonage removed under s.
 127 743.015 or a similar valid and in force statute of another
 128 state;

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

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

132 (c) Violation of this subsection by a physician
 133 constitutes grounds for disciplinary action under s. 458.331 or

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134 s. 459.015 and shall be considered an act of medical
135 malpractice.

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

137 (a) A pregnant minor who is 16 years of age or older may
138 petition the any circuit court in the county where she resides
139 for a waiver of the notice requirements of subsection (3) and
140 may participate in proceedings on her own behalf. The petition
141 must include a statement that the petitioner is pregnant and
142 notice has not been waived. The court may appoint a guardian ad
143 litem for the minor ~~her~~. A guardian ad litem appointed under
144 this subsection shall act to maintain the confidentiality of the
145 proceedings. The circuit court shall advise the minor that she
146 has a right to court-appointed counsel and shall provide the
147 minor ~~her~~ with counsel upon the minor's ~~her~~ request.

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

158 (c) If a pregnant minor is 16 years of age or older and if
159 the court finds, by clear and convincing evidence, that the
160 minor is sufficiently mature to decide whether to terminate her
161 pregnancy without the knowledge of her parent or guardian of the

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162 decision to terminate the pregnancy, the court shall issue an
 163 order authorizing the minor to consent to the performance or
 164 inducement of a termination of pregnancy without providing the
 165 notification to the minor's ~~of a~~ parent or guardian. If the
 166 court does not make the finding specified in this paragraph or
 167 paragraph (d), it must dismiss the petition.

168 (d) If the court finds, by the greater weight of the clear
 169 evidence, that the minor has been the victim ~~there is evidence~~
 170 of child abuse or sexual abuse, including, but not limited to,
 171 rape or incest that resulted in the minor becoming pregnant ~~of~~
 172 ~~the petitioner by one or both of her parents or her guardian, or~~
 173 ~~that the notification of a parent or guardian is not in the best~~
 174 ~~interest of the petitioner~~, the court shall issue an order
 175 authorizing the minor to consent to the performance or
 176 inducement of a termination of pregnancy without the
 177 notification of a parent or guardian. If the court does not make
 178 the finding specified in this paragraph or paragraph (c), it
 179 must dismiss the petition. If the court does make the finding
 180 specified in this paragraph, in addition to an order authorizing
 181 termination the court shall report evidence of child abuse or
 182 sexual abuse of the minor petitioner to the appropriate agency
 183 or law enforcement agency.

184 (e) A court that conducts proceedings under this section
 185 shall provide for a written transcript of all testimony and
 186 proceedings and issue written and specific factual findings and
 187 legal conclusions supporting its decision and shall order that
 188 the a ~~confidential~~ record of the proceedings remain confidential
 189 to the extent provided by s. 390.01116 ~~evidence and the judge's~~

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190 ~~findings and conclusions be maintained.~~ In determining whether a
 191 minor who is 16 years of age or older is sufficiently mature to
 192 decide whether to terminate her pregnancy without the knowledge
 193 of her parent or guardian of the decision to terminate her
 194 pregnancy ~~At the hearing,~~ the court shall consider all relevant
 195 evidence, including ~~hear~~ evidence relating to the minor's
 196 emotional development, maturity, intellect, and understanding of
 197 the consequences of her actions ~~minor~~.

198 (f) An expedited ~~confidential~~ appeal, confidential to the
 199 extent provided by s. 390.01116, shall be available, as the
 200 Supreme Court provides by rule consistent with this act, to any
 201 minor to whom the circuit court denies a waiver of notice to her
 202 parent or guardian. An order authorizing the minor's a
 203 termination of pregnancy without notice to a parent or guardian
 204 is not subject to appeal.

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

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

212 (5) PROCEEDINGS.--The Supreme Court is requested to ~~adopt~~
 213 ~~rules and forms for petitions to~~ ensure that proceedings under
 214 subsection (4) are handled expeditiously and in a manner
 215 consistent with that will satisfy the requirements of state and
 216 federal law courts.

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217 ~~(6) REPORT.--The Supreme Court, through the Office of the~~
218 ~~State Courts Administrator, shall report by February 1 of each~~
219 ~~year to the Governor, the President of the Senate, and the~~
220 ~~Speaker of the House of Representatives on the number of~~
221 ~~petitions filed under subsection (4) for the preceding year, and~~
222 ~~the timing and manner of disposal of such petitions by each~~
223 ~~circuit court.~~

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