

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.;
4 providing a popular name; providing definitions; providing
5 that actual notice shall be given by the physician who
6 will perform the termination of pregnancy procedure;
7 providing for written notice in certain circumstances;
8 specifying information required to be included in notices;
9 providing circumstances in which prior notice is not
10 required; providing that violation of the notice
11 requirements by physicians shall be considered medical
12 malpractice; providing procedures for judicial waiver of
13 notice; providing circumstances under which certain
14 circuit courts may grant a petition for a judicial waiver
15 of notice; providing for the appointment of a guardian ad
16 litem and counsel; providing time requirements for court
17 proceedings; requiring written transcripts of certain
18 proceedings; providing for confidentiality; providing for
19 the availability of an appeal under certain circumstances;
20 waiving filing fees and court costs for certain minors;
21 relieving counties of certain counsel costs; requiring the
22 Supreme Court to ensure certain proceedings are conducted
23 expeditiously and lawfully; providing an effective date.

24
25 WHEREAS, the Legislature finds that parents of children in
26 the State of Florida have a fundamental right to raise their
27 children free from unnecessary government interference, and

28 WHEREAS, the United States Supreme Court has confirmed in
29 H.L. v. Matheson, 450 U.S. 398 (1981), that states further a
30 constitutionally permissible end by encouraging unmarried
31 pregnant minors to seek the help and advice of their parents in
32 making the important decision whether or not to bear a child,
33 and

34 WHEREAS, the Florida Supreme Court's rationale in In re
35 T.W., 551 So. 2d 1186 (Fla. 1989) and North Florida Women's
36 Health and Counseling Services v. State, 886 So. 2d 612 (Fla.
37 2003), is contrary to the rationale of the United States Supreme
38 Court in H.L. v. Matheson, and

39 WHEREAS, the Legislature took testimony from citizens from
40 all over the State of Florida who overwhelmingly believe that a
41 parent's right to know when their child is undergoing a serious
42 medical procedure supersedes any implied right of privacy in the
43 State Constitution, including the right to be notified before
44 the termination of a minor child's pregnancy notwithstanding a
45 minor's right to privacy provided in Article I, Section 23 of
46 the Florida Constitution, and

47 WHEREAS, the citizens of Florida amended the State
48 Constitution in 2004 and authorized the Legislature to require
49 notice to parents or guardians of minors before termination of
50 their minor child's pregnancy, and

51 WHEREAS, the Parental Notice of the Termination of a
52 Minor's Pregnancy Act of 2005 is necessary to protect the
53 fundamental right of parents to raise their children free from
54 unnecessary government interference and to comply with the
55 mandate of the citizens of Florida, NOW, THEREFORE,

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

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

(Substantial rewording of section. See s. 390.01115, F.S., for present text.)

390.01115 Parental Notice of the Termination of a Minor's Pregnancy Act of 2005.--

(1) POPULAR NAME.--This section may be cited as the "Parental Notice of the Termination of a Minor's Pregnancy Act of 2005."

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

(a) "Actual notice" means notice that is a direct in-person communication.

(b) "Child abuse" has the same meaning ascribed in s. 827.03.

(c) "Medical emergency" means a condition that, on the good faith clinical judgment of a physician treating a minor, so complicates the medical condition of a pregnant minor as to necessitate the immediate termination of the minor's pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create certain risk of substantial and irreversible impairment of a major bodily function.

(d) "Sexual abuse" has the same meaning ascribed in s. 39.01.

(3) NOTIFICATION REQUIRED.--

83 (a)1. A termination of the pregnancy of a minor may not be
84 performed or induced upon a minor unless the physician
85 performing or inducing the termination of pregnancy has provided
86 actual notice of the physician's intention to perform or induce
87 the termination of pregnancy to one parent or the legal guardian
88 of the pregnant minor at least 48 hours prior to the
89 commencement of the performance or inducement of the termination
90 of pregnancy. If the physician was not able to provide actual
91 notice after exhausting all reasonable efforts, written notice
92 shall be provided by mail overnight delivery guaranteed, return
93 receipt requested, with delivery restricted to a parent or legal
94 guardian with signature confirmation of receipt, which is
95 deposited at least 48 hours prior to the commencement of the
96 performance or inducement of the termination of pregnancy. The
97 physician shall document the reasonable efforts made to provide
98 actual notice, and such records shall be kept with the minor's
99 medical records. In instances where written notice is provided
100 by mail pursuant to this subparagraph and the physician does not
101 receive the return receipt within 30 days of mailing, the
102 physician shall document the minor's name and date of birth, the
103 date the termination of pregnancy was performed or induced, the
104 name and address of the minor's parent or legal guardian, and
105 that termination of pregnancy services were performed. The
106 physician must maintain such records until the minor reaches 21
107 years of age or for 10 years, whichever occurs first.

108 2. Notice required under this subsection must include the
109 name and address of the facility performing the termination of
110 pregnancy, the name of the physician providing notice, the days

111 and hours of the facility's operation, and when the performance
112 or inducement of the termination of pregnancy is scheduled to be
113 commenced.

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 described in subsection (3) as soon as possible but, in any
122 event, not to exceed 24 hours after the procedure is performed;

123 2. Notice is waived by the minor who is or has been
124 married or has had the disability of nonage removed under s.
125 743.015 or a similar statute of another state; or

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

127 (c) Violation of this subsection by a physician
128 constitutes grounds for disciplinary action under s. 458.331 or
129 s. 459.015 and shall be considered an act of medical
130 malpractice.

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

132 (a) The circuit court of the county in which a pregnant
133 minor resides may grant a petition for a judicial waiver of the
134 notice requirements provided in subsection (3) under the
135 following circumstances:

136 1. If the pregnant minor is 16 years of age or older and
137 the court finds, by clear and convincing evidence, that the
138 minor is sufficiently mature to decide whether to terminate her

139 pregnancy without the advice, counsel, and knowledge of her
140 parent or guardian of the decision to terminate the pregnancy.
141 In determining whether a minor who is 16 years of age or older
142 is sufficiently mature to decide whether to terminate her
143 pregnancy without the advice, counsel, and knowledge of her
144 parent or guardian of the decision to terminate her pregnancy,
145 the court shall consider all relevant evidence relating to the
146 minor's emotional development, maturity, intellect, and
147 understanding of the long-term and short-term consequences of
148 her actions.

149 2. If, regardless of the minor's age, the court finds by a
150 preponderance of the evidence that the minor has been the victim
151 of child abuse or sexual abuse by a family or household member
152 as defined in s. 741.28. A court granting a petition and making
153 a finding pursuant to this subparagraph shall report the
154 evidence of child abuse or sexual abuse of the minor petitioner
155 to the Department of Children and Family Services or the
156 appropriate jurisdictional law enforcement agency.

157 (b) A minor seeking a judicial waiver may participate in
158 proceedings on her own behalf. The petition must include a
159 statement that the petitioner is pregnant and notice has not
160 been waived. The court shall appoint a guardian ad litem for the
161 minor. A guardian ad litem appointed under this subsection shall
162 act to maintain the confidentiality of the proceedings. The
163 court may appoint counsel to represent the minor in proceedings
164 under this subsection when the services of an attorney have been
165 recommended by the guardian ad litem based on the circumstances
166 of the case. The court shall advise the minor of the

167 availability of counsel authorized in this subsection and shall
168 appoint counsel upon recommendation of the guardian ad litem.

169 (c) Court proceedings under this subsection must be given
170 precedence over other pending matters to the extent necessary to
171 ensure that the circuit court reaches a prompt decision. The
172 circuit court shall rule, and issue written findings of fact and
173 conclusions of law, no later than 7 days from the date the
174 minor's petition is filed.

175 (d) A court that conducts proceedings under this
176 subsection shall provide for a written transcript of all
177 testimony and proceedings and issue written and specific factual
178 findings and legal conclusions supporting its decision and shall
179 order that the record of the proceedings remain confidential to
180 the extent provided by s. 390.01116.

181 (e) An expedited appeal, confidential to the extent
182 provided by s. 390.01116, shall be available, as the Supreme
183 Court provides by rule consistent with this section, to any
184 minor to whom the circuit court denies a waiver of notice to her
185 parent or guardian. An order authorizing the minor's termination
186 of pregnancy without notice to a parent or guardian is not
187 subject to appeal.

188 (f) No filing fees or court costs shall be required of any
189 pregnant minor who petitions the court for a waiver of parental
190 notification under this subsection at either the trial or the
191 appellate level.

192 (g) No county shall be obligated to pay the salaries,
193 costs, or expenses of any counsel appointed by the court under
194 this subsection.

HB 1659, Engrossed 1

2005

195 | (5) PROCEEDINGS.--The Supreme Court is requested to ensure
196 | that proceedings under subsection (4) are conducted
197 | expeditiously and in a manner consistent with the requirements
198 | of this section.

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