

## ENROLLED

HB 1659, Engrossed 2

2005 Legislature

1 A bill to be entitled

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

25  
26 Be It Enacted by the Legislature of the State of Florida:  
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28           Section 1.   Section 390.01115, Florida Statutes, is  
 29 repealed.

30           Section 2.   Section 390.01114, Florida Statutes, is created  
 31 to read:

32           390.01114 Parental Notice of Abortion Act.--

33           (1) SHORT TITLE.--This section may be cited as the  
 34 "Parental Notice of Abortion Act."

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

36           (a) "Actual notice" means notice that is given directly,  
 37 in person or by telephone, to a parent or legal guardian of a  
 38 minor, by a physician, at least 48 hours before the inducement  
 39 or performance of a termination of pregnancy, and documented in  
 40 the minor's files.

41           (b) "Child abuse" has the same meaning as s. 39.0015(3).

42           (c) "Constructive notice" means notice that is given in  
 43 writing, signed by the physician, and mailed at least 72 hours  
 44 before the inducement or performance of the termination of  
 45 pregnancy, to the last known address of the parent or legal  
 46 guardian of the minor, by certified mail, return receipt  
 47 requested, and delivery restricted to the parent or legal  
 48 guardian. After the 72 hours have passed, delivery is deemed to  
 49 have occurred.

50           (d) "Medical emergency" means a condition that, on the  
 51 basis of a physician's good faith clinical judgment, so  
 52 complicates the medical condition of a pregnant woman as to  
 53 necessitate the immediate termination of her pregnancy to avert  
 54 her death, or for which a delay in the termination of her

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55 pregnancy will create serious risk of substantial and  
 56 irreversible impairment of a major bodily function.  
 57 (e) "Sexual abuse" has the meaning ascribed in s. 39.01.  
 58 (f) "Minor" means a person under the age of 18 years.  
 59 (3) NOTIFICATION REQUIRED.--  
 60 (a) Actual notice shall be provided by the physician  
 61 performing or inducing the termination of pregnancy before the  
 62 performance or inducement of the termination of the pregnancy of  
 63 a minor. The notice may be given by a referring physician. The  
 64 physician who performs or induces the termination of pregnancy  
 65 must receive the written statement of the referring physician  
 66 certifying that the referring physician has given notice. If  
 67 actual notice is not possible after a reasonable effort has been  
 68 made, the physician performing or inducing the termination of  
 69 pregnancy or the referring physician must give constructive  
 70 notice. Notice given under this subsection by the physician  
 71 performing or inducing the termination of pregnancy must include  
 72 the name and address of the facility providing the termination  
 73 of pregnancy, the name of the physician providing notice. Notice  
 74 given under this subsection by a referring physician must  
 75 include the name and address of the facility where he or she is  
 76 referring the minor and the name of the physician providing  
 77 notice. If actual notice is provided by telephone, the physician  
 78 must actually speak with the parent or guardian, and must record  
 79 in the minor's medical file the name of the parent or guardian  
 80 provided notice, the phone number dialed, and the date and time  
 81 of the call. If constructive notice is given, the physician must  
 82 document that notice by placing copies of any document related

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83 to the constructive notice, including, but not limited to, a  
 84 copy of the letter and the return receipt, in the minor's  
 85 medical file.

86 (b) Notice is not required if:

87 1. In the physician's good-faith clinical judgment, a  
 88 medical emergency exists and there is insufficient time for the  
 89 attending physician to comply with the notification  
 90 requirements. If a medical emergency exists, the physician may  
 91 proceed but must document reasons for the medical necessity in  
 92 the patient's medical records;

93 2. Notice is waived in writing by the person who is  
 94 entitled to notice;

95 3. Notice is waived by the minor who is or has been  
 96 married or has had the disability of nonage removed under s.  
 97 743.015 or a similar statute of another state;

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

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

101 (c) Violation of this subsection by a physician  
 102 constitutes grounds for disciplinary action under s. 458.331 or  
 103 s. 459.015.

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

105 (a) A minor may petition any circuit court in a judicial  
 106 circuit within the jurisdiction of the District Court of Appeal  
 107 in which she resides for a waiver of the notice requirements of  
 108 subsection (3) and may participate in proceedings on her own  
 109 behalf. The petition may be filed under a pseudonym or through  
 110 the use of initials, as provided by court rule. The petition

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111 must include a statement that the petitioner is pregnant and  
112 notice has not been waived. The court shall advise the minor  
113 that she has a right to court-appointed counsel and shall  
114 provide her with counsel upon her request at no cost to the  
115 minor.

116 (b) Court proceedings under this subsection must be given  
117 precedence over other pending matters to the extent necessary to  
118 ensure that the court reaches a decision promptly. The court  
119 shall rule, and issue written findings of fact and conclusions  
120 of law, within 48 hours after the petition is filed, except that  
121 the 48-hour limitation may be extended at the request of the  
122 minor. If the court fails to rule within the 48-hour period and  
123 an extension has not been requested, the petition is granted,  
124 and the notice requirement is waived.

125 (c) If the court finds, by clear and convincing evidence,  
126 that the minor is sufficiently mature to decide whether to  
127 terminate her pregnancy, the court shall issue an order  
128 authorizing the minor to consent to the performance or  
129 inducement of a termination of pregnancy without the  
130 notification of a parent or guardian. If the court does not make  
131 the finding specified in this paragraph or paragraph (d), it  
132 must dismiss the petition.

133 (d) If the court finds, by a preponderance of the  
134 evidence, that there is evidence of child abuse or sexual abuse  
135 of the petitioner by one or both of her parents or her guardian,  
136 or that the notification of a parent or guardian is not in the  
137 best interest of the petitioner, the court shall issue an order  
138 authorizing the minor to consent to the performance or

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139 inducement of a termination of pregnancy without the  
140 notification of a parent or guardian. If the court finds  
141 evidence of child abuse or sexual abuse of the minor petitioner  
142 by any person, the court shall report the evidence of child  
143 abuse or sexual abuse of the petitioner, as provided in s.  
144 39.201. If the court does not make the finding specified in this  
145 paragraph or paragraph (c), it must dismiss the petition.

146 (e) A court that conducts proceedings under this section  
147 shall provide for a written transcript of all testimony and  
148 proceedings and issue written and specific factual findings and  
149 legal conclusions supporting its decision and shall order that a  
150 confidential record be maintained, as required under s.  
151 390.01116. At the hearing, the court shall hear evidence  
152 relating to the emotional development, maturity, intellect, and  
153 understanding of the minor, and all other relevant evidence. All  
154 hearings under this section, including appeals, shall remain  
155 confidential and closed to the public, as provided by court  
156 rule.

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

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

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

168        (5) PROCEEDINGS.--The Supreme Court is requested to adopt  
169 rules and forms for petitions to ensure that proceedings under  
170 subsection (4) are handled expeditiously and in a manner  
171 consistent with this act. The Supreme Court is also requested to  
172 adopt rules to ensure that the hearings protect the minor's  
173 confidentiality and the confidentiality of the proceedings.

174        (6) REPORT.--The Supreme Court, through the Office of the  
175 State Courts Administrator, shall report by February 1 of each  
176 year to the Governor, the President of the Senate, and the  
177 Speaker of the House of Representatives on the number of  
178 petitions filed under subsection (4) for the preceding year, and  
179 the timing and manner of disposal of such petitions by each  
180 circuit court.

181        Section 3. This act shall take effect upon the adoption of  
182 rules and forms by the Supreme Court, but no later than July 1,  
183 2005.

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