

By the Committee on Judiciary; and Senators Dockery, Fasano, Webster, Bullard, Peaden, Lawson, King, Garcia, Haridopolos, Diaz de la Portilla, Saunders, Pruitt, Wise, Alexander, Atwater, Lynn, Argenziano, Jones, Bennett, Sebesta, Baker and Villalobos

590-1969-05

1 A bill to be entitled

2 An act relating to the termination of

3 pregnancies; repealing s. 390.01115, F.S.,

4 relating to the Parental Notice of Abortion

5 Act; creating s. 390.01114, F.S.; creating the

6 Parental Notice of Abortion Act; providing a

7 short title; defining terms; prohibiting the

8 performing or inducement of a termination of

9 pregnancy upon a minor without specified

10 notice; providing disciplinary action for

11 violation; prescribing notice requirements;

12 providing exceptions; prescribing a procedure

13 for judicial waiver of notice; providing for

14 notice of right to counsel; providing for

15 issuance of a court order authorizing consent

16 to a termination of pregnancy without

17 notification; providing for dismissal of

18 petitions; requiring the issuance of written

19 findings of fact and legal conclusions;

20 providing for expedited appeal; providing for

21 waiver of filing fees and court costs;

22 precluding assumption of certain expenses by

23 counties; requesting the Supreme Court to adopt

24 rules; requiring the Supreme Court to report

25 annually to the Governor and the Legislature;

26 providing an effective date.

27

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

29

30 Section 1. Section 390.01115, Florida Statutes, is

31 repealed.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

3 390.01114 Parental Notice of Abortion Act.--

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

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

7 (a) "Actual notice" means notice that is given
8 directly, in person, or by telephone.

9 (b) "Child abuse" has the meaning ascribed in s.
10 39.0015(3).

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

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

22 (e) "Sexual abuse" has the meaning ascribed in s.
23 39.01.

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

25 (3) NOTIFICATION REQUIRED.--

26 (a) A termination of pregnancy may not be performed or
27 induced upon a minor unless the physician performing or
28 inducing the termination of pregnancy has given at least 48
29 hours' actual notice to one parent or to the legal guardian of
30 the pregnant minor of his or her intention to perform or
31 induce the termination of pregnancy. The notice may be given

1 by a referring physician. The physician who performs the
2 termination of pregnancy must receive the written statement of
3 the referring physician certifying that the referring
4 physician has given notice. If actual notice is not possible
5 after a reasonable effort has been made, the physician
6 performing or inducing the termination of pregnancy or the
7 referring physician must give 48 hours' constructive notice.

8 (b) Notice is not required if:

9 1. In the physician's good-faith clinical judgment, a
10 medical emergency exists and there is insufficient time for
11 the attending physician to comply with the notification
12 requirements. If a medical emergency exists, the physician may
13 proceed but must document reasons for the medical necessity in
14 the patient's medical records;

15 2. Notice is waived in writing by the person who is
16 entitled to notice;

17 3. Notice is waived by the minor who is or has been
18 married or has had the disability of nonage removed under s.
19 743.015 or a similar statute of another state;

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

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

23 (c) Violation of this subsection by a physician
24 constitutes grounds for disciplinary action under s. 458.331
25 or s. 459.015.

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

27 (a) A minor may petition any circuit court for a
28 waiver of the notice requirements of subsection (3) and may
29 participate in proceedings on her own behalf. The petition may
30 be filed under a pseudonym. The court shall maintain the
31 petition and any supporting documentation under seal. The

1 petition must include a statement that the petitioner is
2 pregnant and notice has not been waived. The court shall
3 advise the minor that she has a right to court-appointed
4 counsel and shall provide her with counsel upon her request at
5 no cost to the minor.

6 (b) Court proceedings under this subsection must be
7 given precedence over other pending matters to the extent
8 necessary to ensure that the court reaches a decision
9 promptly. The court shall rule, and issue written findings of
10 fact and conclusions of law, within 48 hours after the
11 petition is filed, except that the 48-hour limitation may be
12 extended at the request of the minor. If the court fails to
13 rule within the 48-hour period and an extension has not been
14 requested, the petition is granted, and the notice requirement
15 is waived.

16 (c) If the court finds, by clear and convincing
17 evidence, that the minor is sufficiently mature to decide
18 whether to terminate her pregnancy, the court shall issue an
19 order authorizing the minor to consent to the performance or
20 inducement of a termination of pregnancy without the
21 notification of a parent or guardian. If the court does not
22 make the finding specified in this paragraph or paragraph (d),
23 it must dismiss the petition.

24 (d) If the court finds, by clear and convincing
25 evidence, that there is evidence of child abuse or sexual
26 abuse of the petitioner by one or both of her parents or her
27 guardian, or that the notification of a parent or guardian is
28 not in the best interest of the petitioner, the court shall
29 issue an order authorizing the minor to consent to the
30 performance or inducement of a termination of pregnancy
31 without the notification of a parent or guardian. If the court

1 finds evidence of child abuse or sexual abuse of the minor
2 petitioner by any person, the court shall report the evidence
3 of child abuse or sexual abuse of the petitioner to the
4 appropriate agency or law enforcement agency. If the court
5 does not make the finding specified in this paragraph or
6 paragraph (c), it must dismiss the petition.

7 (e) A court that conducts proceedings under this
8 section shall provide for a written transcript of all
9 testimony and proceedings and issue written and specific
10 factual findings and legal conclusions supporting its decision
11 and shall order that a confidential record of the evidence and
12 the judge's findings and conclusions be maintained. At the
13 hearing, the court shall hear evidence relating to the
14 emotional development, maturity, intellect, and understanding
15 of the minor, and all other relevant evidence.

16 (f) An expedited confidential appeal shall be
17 available, as the Supreme Court provides by rule, to any minor
18 to whom the circuit court denies a waiver of notice. An order
19 authorizing a termination of pregnancy without notice is not
20 subject to appeal.

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

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

28 (5) PROCEEDINGS.--The Supreme Court is requested to
29 adopt rules and forms for petitions to ensure that proceedings
30 under subsection (4) are handled expeditiously and in a manner
31 that will satisfy the requirements of state and federal

1 courts. The Supreme Court is also requested to adopt rules to
2 ensure that the hearings protect the minor's confidentiality
3 and the confidentiality of the proceedings.

4 (6) REPORT.--The Supreme Court, through the Office of
5 the State Courts Administrator, shall report by February 1 of
6 each year to the Governor, the President of the Senate, and
7 the Speaker of the House of Representatives on the number of
8 petitions filed under subsection (4) for the preceding year,
9 and the timing and manner of disposal of such petitions by
10 each circuit court.

11 Section 3. This act shall take effect July 1, 2005.

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13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 1908

16 This committee substitute makes the following changes:

- 17 -- Defines a minor as a person who is under the age of 18;
18 -- Removes a provision which authorized the court to appoint
19 a guardian ad litem in a judicial waiver hearing;
20 -- Authorizes a judicial waiver petition to be filed under a
21 pseudonym, and requires the court to maintain the
22 petition and other documentation under seal;
23 -- Clarifies that the appointment of counsel is to be at no
24 cost to the minor;
25 -- Clarifies that the burden of proof is "clear and
26 convincing";
27 -- Requires the court to report evidence of child abuse or
28 sexual abuse by any person;
29 -- Expands evidence that the court is required to hear to
30 include all other relevant evidence; and
31 -- Requests the Supreme Court to adopt rules providing for
confidentiality.