

1 A bill to be entitled
 2 An act relating to parental notification of termination of
 3 a minor's pregnancy; amending s. 390.01114, F.S.; amending
 4 a definition; providing procedural requirements for actual
 5 notice given by telephone; providing procedural
 6 requirements for certain waivers of notice; revising the
 7 procedures for judicial waiver of notice; revising
 8 evidentiary standards for a court determining judicial
 9 waiver of notice; providing factors with which a court
 10 determines whether a minor is sufficiently mature;
 11 revising the best interest standard; requiring the Supreme
 12 Court to include in reports reasons for judicial waiver of
 13 notice; providing for the application of mandatory child
 14 abuse reporting provisions; providing an effective date.

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

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 18 Section 1. Section 390.01114, Florida Statutes, is amended
 19 to read:

20 390.01114 Parental Notice of Abortion Act.--

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

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

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

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

30 (c) "Constructive notice" means notice that is given in
31 writing, signed by the physician, and mailed at least 72 hours
32 before the inducement or performance of the termination of
33 pregnancy, to the last known address of the parent or legal
34 guardian of the minor, by certified mail and by regular mail,
35 return receipt requested, and delivery restricted to the parent
36 or legal guardian. After the 72 hours have passed, delivery is
37 deemed to have occurred.

38 (d) "Medical emergency" means a condition that, on the
39 basis of a physician's good faith clinical judgment, so
40 complicates the medical condition of a pregnant woman as to
41 necessitate the immediate termination of her pregnancy to avert
42 her death, or for which a delay in the termination of her
43 pregnancy will create serious risk of substantial and
44 irreversible impairment of a major bodily function.

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

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

47 (3) NOTIFICATION REQUIRED.--

48 (a) Actual notice shall be provided by the physician
49 performing or inducing the termination of pregnancy before the
50 performance or inducement of the termination of the pregnancy of
51 a minor. The notice may be given by a referring physician. The
52 physician who performs or induces the termination of pregnancy
53 must receive the written statement of the referring physician
54 certifying that the referring physician has given notice. If
55 actual notice is not possible after a reasonable effort has been
56 made, the physician performing or inducing the termination of

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57 pregnancy or the referring physician must give constructive
58 notice. Notice given under this subsection by the physician
59 performing or inducing the termination of pregnancy must include
60 the name and address of the facility providing the termination
61 of pregnancy, the name of the physician providing notice. Notice
62 given under this subsection by a referring physician must
63 include the name and address of the facility where he or she is
64 referring the minor and the name of the physician providing
65 notice. If actual notice is provided by telephone, the physician
66 must actually speak with the parent or guardian, and must record
67 in the minor's medical file the name of the parent or guardian
68 provided notice, the phone number dialed, and the date and time
69 of the call. If constructive notice is given, the physician must
70 document that notice by placing copies of any document related
71 to the constructive notice, including, but not limited to, a
72 copy of the letter and the return receipt, in the minor's
73 medical file. Actual notice given by telephone shall be
74 confirmed in writing, signed by the physician, and mailed to the
75 last known address of the parent or legal guardian of the minor,
76 by certified mail and by regular mail, return receipt requested,
77 and delivery restricted to the parent or legal guardian.

78 (b) Notice is not required if:

79 1. In the physician's good faith clinical judgment, a
80 medical emergency exists and there is insufficient time for the
81 attending physician to comply with the notification
82 requirements. If a medical emergency exists, the physician must
83 make reasonable attempts to contact the parent or legal
84 guardian, may proceed but must document reasons for the medical

85 | necessity in the patient's medical records, and must provide
 86 | notice directly, in person, or by telephone, to the parent or
 87 | legal guardian, with details of the medical emergency and any
 88 | additional risks to the minor. If the parent or legal guardian
 89 | has not been notified within 24 hours of the termination of the
 90 | pregnancy, the physician must provide notice in writing
 91 | including details of the medical emergency and any additional
 92 | risks to the minor, signed by the physician, to the last known
 93 | address of the parent or legal guardian of the minor, by
 94 | certified mail and by regular mail, return receipt requested,
 95 | and delivery restricted to the parent or legal guardian;

96 | 2. Notice is waived in writing by the person who is
 97 | entitled to notice and such waiver is notarized, dated not more
 98 | than 30 days before the termination of pregnancy, and contains a
 99 | specific waiver of the right of the parent or legal guardian to
 100 | notice of the minor's termination of pregnancy;

101 | 3. Notice is waived by the minor who is or has been
 102 | married or has had the disability of nonage removed under s.
 103 | 743.015 or a similar statute of another state;

104 | 4. Notice is waived by the patient because the patient has
 105 | a minor child dependent on her; or

106 | 5. Notice is waived under subsection (4).

107 | (c) Violation of this subsection by a physician
 108 | constitutes grounds for disciplinary action under s. 458.331 or
 109 | s. 459.015.

110 | (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

111 | (a) A minor may petition any circuit court in the a
 112 | judicial circuit ~~within the jurisdiction of the District Court~~

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113 ~~of Appeal~~ in which she resides for a waiver of the notice
114 requirements of subsection (3) and may participate in
115 proceedings on her own behalf. The petition may be filed under a
116 pseudonym or through the use of initials, as provided by court
117 rule. The petition must include a statement that the petitioner
118 is pregnant and notice has not been waived. The court shall
119 advise the minor that she has a right to court-appointed counsel
120 and shall provide her with counsel upon her request at no cost
121 to the minor.

122 (b)1. Court proceedings under this subsection must be
123 given precedence over other pending matters to the extent
124 necessary to ensure that the court reaches a decision promptly.
125 The court shall rule, and issue written findings of fact and
126 conclusions of law, within 5 days ~~48 hours~~ after the petition is
127 filed, except that the 5-day ~~48-hour~~ limitation may be extended
128 at the request of the minor. If the court fails to rule within
129 the 5-day ~~48-hour~~ period and an extension has not been
130 requested, the petition is not granted, and the notice
131 requirement is not waived. The minor may then immediately
132 petition for a hearing within 48 hours of the expiration of the
133 5-day period to the chief judge of the circuit, who must ensure
134 a hearing is held within 48 hours after receipt of the minor's
135 petition and an order granted within 24 hours after the hearing.

136 2. A court's ruling need not be a final order if the court
137 deems it needs more information, but a final order must be
138 granted within 14 days after the petition is filed. If the
139 circuit court does not grant judicial waiver of notice, the
140 minor has the right to appeal. An appellate court must rule

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141 within 7 days after receipt of appeal, but a ruling may be
142 remanded with further instruction for a ruling within 7 days
143 after the remand. The reason for overturning a ruling on appeal
144 must be based on abuse of discretion by the circuit court and
145 may not be based on the weight of the evidence presented to the
146 circuit court since the proceeding is a nonadversarial
147 proceeding.

148 (c) If the court finds, by clear and convincing evidence,
149 that the minor is sufficiently mature to decide whether to
150 terminate her pregnancy, the court shall issue an order
151 authorizing the minor to consent to the performance or
152 inducement of a termination of pregnancy without the
153 notification of a parent or guardian. If the court does not make
154 the finding specified in this paragraph or paragraph (d), it
155 must dismiss the petition. Factors a court shall consider when
156 determining whether a minor is sufficiently mature include, but
157 are not limited to:

158 1. The minor's:

159 a. Age.

160 b. Overall intelligence.

161 c. Emotional stability.

162 d. Credibility and demeanor as a witness.

163 e. Ability to accept responsibility.

164 f. Ability to assess the future impact of her present
165 choices.

166 g. Ability to understand and explain the medical
167 consequences of abortion and apply that understanding to her
168 decision.

169 2. Whether there has been any undue influence by another
170 on the minor's decision to have an abortion.

171 (d) If the court finds, by a preponderance of the
172 evidence, that there is evidence of child abuse or sexual abuse
173 of the petitioner by one or both of her parents or her guardian,
174 or by clear and convincing evidence that the notification of a
175 parent or guardian is not in the best interest of the
176 petitioner, the court shall issue an order authorizing the minor
177 to consent to the performance or inducement of a termination of
178 pregnancy without the notification of a parent or guardian. The
179 best interest standard must not include financial best interest
180 or considerations, or the potential financial impact on the
181 minor or her family if she does not terminate her pregnancy. If
182 the court finds evidence of child abuse or sexual abuse of the
183 minor petitioner by any person, the court shall report the
184 evidence of child abuse or sexual abuse of the petitioner, as
185 provided in s. 39.201. If the court does not make the finding
186 specified in this paragraph or paragraph (c), it must dismiss
187 the petition.

188 (e) A court that conducts proceedings under this section
189 shall provide for a written transcript of all testimony and
190 proceedings and issue written and specific factual findings and
191 legal conclusions supporting its decision and shall order that a
192 confidential record be maintained, as required under s.
193 390.01116. At the hearing, the court shall hear evidence
194 relating to the emotional development, maturity, intellect, and
195 understanding of the minor, and all other relevant evidence. All
196 hearings under this section, including appeals, shall remain

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197 confidential and closed to the public, as provided by court
198 rule.

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

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

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

210 (5) PROCEEDINGS.--The Supreme Court is requested to adopt
211 rules and forms for petitions to ensure that proceedings under
212 subsection (4) are handled expeditiously and in a manner
213 consistent with this act. The Supreme Court is also requested to
214 adopt rules to ensure that the hearings protect the minor's
215 confidentiality and the confidentiality of the proceedings.

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

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224 (7) MANDATORY CHILD ABUSE REPORTING.--The requirements of
225 s. 39.201 relating to mandatory reports of child abuse apply to
226 this section.

227 Section 2. This act shall take effect July 1, 2006.