

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. 390.01114, F.S.; amending
8 a definition; providing procedural requirements for actual
9 notice given by telephone; providing procedural
10 requirements for certain waivers of notice; revising the
11 procedures for judicial waiver of notice; revising
12 evidentiary standards for a court determining judicial
13 waiver of notice; providing factors with which a court
14 determines whether a minor is sufficiently mature;
15 revising the best interest standard; requiring the Supreme
16 Court to include in reports reasons for judicial waiver of
17 notice; providing for the application of mandatory child
18 abuse reporting provisions; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 390.01114, Florida Statutes, is amended
23 to read:

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24 | 390.01114 Parental Notice of Abortion Act.--

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

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

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

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

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

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

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

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

51 | (3) NOTIFICATION REQUIRED.--

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52 (a) Actual notice shall be provided by the physician
53 performing or inducing the termination of pregnancy before the
54 performance or inducement of the termination of the pregnancy of
55 a minor. The notice may be given by a referring physician. The
56 physician who performs or induces the termination of pregnancy
57 must receive the written statement of the referring physician
58 certifying that the referring physician has given notice. If
59 actual notice is not possible after a reasonable effort has been
60 made, the physician performing or inducing the termination of
61 pregnancy or the referring physician must give constructive
62 notice. Notice given under this subsection by the physician
63 performing or inducing the termination of pregnancy must include
64 the name and address of the facility providing the termination
65 of pregnancy, the name of the physician providing notice. Notice
66 given under this subsection by a referring physician must
67 include the name and address of the facility where he or she is
68 referring the minor and the name of the physician providing
69 notice. If actual notice is provided by telephone, the physician
70 must actually speak with the parent or guardian, and must record
71 in the minor's medical file the name of the parent or guardian
72 provided notice, the phone number dialed, and the date and time
73 of the call. If constructive notice is given, the physician must
74 document that notice by placing copies of any document related
75 to the constructive notice, including, but not limited to, a
76 copy of the letter and the return receipt, in the minor's
77 medical file. Actual notice given by telephone shall be
78 confirmed in writing, signed by the physician, and mailed to the
79 last known address of the parent or legal guardian of the minor,

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

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80 by regular mail and by certified mail, return receipt requested,
81 and delivery restricted to the parent or legal guardian.

82 (b) Notice is not required if:

83 1. In the physician's good faith clinical judgment, a
84 medical emergency exists and there is insufficient time for the
85 attending physician to comply with the notification
86 requirements. If a medical emergency exists, the physician must
87 make reasonable attempts to contact the parent or legal
88 guardian, may proceed but must document reasons for the medical
89 necessity in the patient's medical records, and must provide
90 notice directly, in person, or by telephone, to the parent or
91 legal guardian, with details of the medical emergency and any
92 additional risks to the minor. If the parent or legal guardian
93 has not been notified within 24 hours of the termination of the
94 pregnancy, the physician must provide notice in writing
95 including details of the medical emergency and any additional
96 risks to the minor, signed by the physician, to the last known
97 address of the parent or legal guardian of the minor, by regular
98 mail and by certified mail, return receipt requested, and
99 delivery restricted to the parent or legal guardian;

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

105 3. Notice is waived by the minor who is or has been
106 married or has had the disability of nonage removed under s.
107 743.015 or a similar statute of another state;

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

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

111 (c) Violation of this subsection by a physician
112 constitutes grounds for disciplinary action under s. 458.331 or
113 s. 459.015.

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

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

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

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136 petition for a hearing upon the expiration of the 5-day period
 137 to the chief judge of the circuit, who must ensure a hearing is
 138 held within 48 hours after receipt of the minor's petition and
 139 an order entered within 24 hours after the hearing.

140 2. A court's ruling need not be a final order if the court
 141 deems it needs more information, but a final order must be
 142 entered within 14 days after the petition is filed. If the
 143 circuit court does not grant judicial waiver of notice, the
 144 minor has the right to appeal. An appellate court must rule
 145 within 7 days after receipt of appeal, but a ruling may be
 146 remanded with further instruction for a ruling within 7 days
 147 after the remand. The reason for overturning a ruling on appeal
 148 must be based on abuse of discretion by the circuit court and
 149 may not be based on the weight of the evidence presented to the
 150 circuit court since the proceeding is a nonadversarial
 151 proceeding.

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

- 162 1. The minor's:
 163 a. Age.

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164 b. Overall intelligence.

165 c. Emotional stability.

166 d. Credibility and demeanor as a witness.

167 e. Ability to accept responsibility.

168 f. Ability to assess the future impact of her present
169 choices.

170 g. Ability to understand and explain the medical
171 consequences of abortion and apply that understanding to her
172 decision.

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

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

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192 (e) A court that conducts proceedings under this section
 193 shall provide for a written transcript of all testimony and
 194 proceedings and issue written and specific factual findings and
 195 legal conclusions supporting its decision and shall order that a
 196 confidential record be maintained, as required under s.
 197 390.01116. At the hearing, the court shall hear evidence
 198 relating to the emotional development, maturity, intellect, and
 199 understanding of the minor, and all other relevant evidence. All
 200 hearings under this section, including appeals, shall remain
 201 confidential and closed to the public, as provided by court
 202 rule.

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

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

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

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

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

228 (7) MANDATORY CHILD ABUSE REPORTING.--The requirements of
229 s. 39.201 relating to mandatory reports of child abuse apply to
230 this section.

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