

CHAMBER ACTION

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1 The Justice Council recommends the following:

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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:

HB 1527 CS

2006  
CS

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.--

HB 1527 CS

2006  
CS

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,

Page 3 of 9

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

hb1527-02-c2

HB 1527 CS

2006  
CS

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  
87 should make reasonable attempts, whenever possible without  
88 endangering the minor, to contact the parent or legal guardian.  
89 The physician may proceed without prior notice but must document  
90 reasons for the medical necessity in the patient's medical  
91 records and must provide notice directly, in person, or by  
92 telephone to the parent or legal guardian, with details of the  
93 medical emergency and any additional risks to the minor. If the  
94 parent or legal guardian has not been notified within 24 hours  
95 of the termination of the pregnancy, the physician must provide  
96 notice in writing including details of the medical emergency and  
97 any additional risks to the minor, signed by the physician, to  
98 the last known address of the parent or legal guardian of the  
99 minor, by regular mail and by certified mail, return receipt  
100 requested, and delivery restricted to the parent or legal  
101 guardian;

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

HB 1527 CS

2006  
CS

107           3. Notice is waived by the minor who is or has been  
108 married or has had the disability of nonage removed under s.  
109 743.015 or a similar statute of another state;

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

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

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

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

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

128           (b)1. Court proceedings under this subsection must be  
129 given precedence over other pending matters to the extent  
130 necessary to ensure that the court reaches a decision promptly.  
131 The court shall rule, and issue written findings of fact and  
132 conclusions of law, within 5 days ~~48 hours~~ after the petition is  
133 filed, except that the 5-day ~~48-hour~~ limitation may be extended  
134 at the request of the minor. If the court fails to rule within

HB 1527 CS

2006  
CS

135 the 5-day ~~48-hour~~ period and an extension has not been  
136 requested, the petition is not granted, and the notice  
137 requirement is not waived. The minor may then immediately  
138 petition for a hearing upon the expiration of the 5-day period  
139 to the chief judge of the circuit, who must ensure a hearing is  
140 held within 48 hours after receipt of the minor's petition and  
141 an order entered within 24 hours after the hearing.

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

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

HB 1527 CS

2006  
CS

162 determining whether a minor is sufficiently mature include, but  
163 are not limited to:

164 1. The minor's:

165 a. Age.

166 b. Overall intelligence.

167 c. Emotional stability.

168 d. Credibility and demeanor as a witness.

169 e. Ability to accept responsibility.

170 f. Ability to assess the future impact of her present  
171 choices.

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

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

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

HB 1527 CS

2006  
CS

190 evidence of child abuse or sexual abuse of the petitioner, as  
191 provided in s. 39.201. If the court does not make the finding  
192 specified in this paragraph or paragraph (c), it must dismiss  
193 the petition.

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

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

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

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

216 (5) PROCEEDINGS.--The Supreme Court is requested to adopt  
217 rules and forms for petitions to ensure that proceedings under



HB 1527 CS

2006  
CS

218 subsection (4) are handled expeditiously and in a manner  
219 consistent with this act. The Supreme Court is also requested to  
220 adopt rules to ensure that the hearings protect the minor's  
221 confidentiality and the confidentiality of the proceedings.

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

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

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