

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.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 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.

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

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

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

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

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

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

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

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

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

135 to the chief judge of the circuit, who must ensure a hearing is
136 held within 48 hours after receipt of the minor's petition and
137 an order entered within 24 hours after the hearing.

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

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

160 1. The minor's:

161 a. Age.

162 b. Overall intelligence.

163 c. Emotional stability.

164 d. Credibility and demeanor as a witness.

165 e. Ability to accept responsibility.

166 f. Ability to assess the future impact of her present
167 choices.

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

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

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

188 specified in this paragraph or paragraph (c), it must dismiss
189 the petition.

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

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

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

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

212 (5) PROCEEDINGS.--The Supreme Court is requested to adopt
213 rules and forms for petitions to ensure that proceedings under
214 subsection (4) are handled expeditiously and in a manner

215 consistent with this act. The Supreme Court is also requested to
216 adopt rules to ensure that the hearings protect the minor's
217 confidentiality and the confidentiality of the proceedings.

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

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

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