

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Regulation Committee

BILL: CS/SB 1602

INTRODUCER: Health Regulation Committee and Senator Storms

SUBJECT: Parental Notice of Abortion

DATE: April 12, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HR</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute amends the Parental Notice of Abortion Act to require the appointment of a guardian ad litem for a minor who petitions for a waiver of the parental notice requirements. The committee substitute further provides factors a court must consider when it decides whether a minor is sufficiently mature to decide whether to terminate her pregnancy, including whether or not there has been intimidation or undue influence on the minor's decision to terminate the pregnancy. The committee substitute provides that if any provision of this act is held invalid, it does not affect the rest of the act, as the provisions of this act are severable.

The committee substitute amends s. 390.01114, F.S.

II. Present Situation:

In 1999, the Florida Legislature passed legislation requiring parental notification before a minor could obtain an abortion in s. 390.01115, F.S. The Legislature also provided a judicial bypass or waiver that could be obtained by a minor under some circumstances. However, the 1999 legislation was held unconstitutional in 2003.¹

In 2004, the Constitution of the State of Florida was amended to include Article X, Section 22, permitting the Legislature to provide for parental notice of termination of a minor's pregnancy. In response to this constitutional amendment, the Florida Legislature passed chapter 2005-52,

¹ *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So.2d 612 (Fla.2003).

Laws of Florida, which repealed the old parental notice law in s. 390.01115, F.S., and created s. 390.01114, the Parental Notice of Abortion Act.²

The Parental Notice of Abortion Act requires parental notification before a minor may obtain an abortion but allows for the judicial waiver of the notification requirement. It also requests the Florida Supreme Court to adopt the necessary rules and forms applicable to such proceedings. The act was to become effective when the rules and forms were adopted by the Supreme Court or no later than July 1, 2005.³

III. Effect of Proposed Changes:

Section 1. Amends s. 390.01114, F.S., to require the appointment of a guardian ad litem for a minor who petitions for a waiver of the parental notice requirements. The committee substitute further requires a court to consider certain factors in deciding whether to grant the waiver. The court must consider the following factors:

- The minor's:
 - Age;
 - Overall intelligence;
 - Emotional stability;
 - Credibility and demeanor as a witness;
 - Ability to accept responsibility;
 - Ability to assess the future consequences of her choices; and
 - Ability to understand and explain the medical consequences of her decision.
- Whether there has been any intimidation or undue influence on the minor's decision to terminate the pregnancy.

The cross references between subsection (4)(c) and (4)(d) are deleted. These paragraphs require the court to make a finding either that the minor is sufficiently mature to decide whether to terminate her pregnancy or that there is evidence of child abuse or sexual abuse of the petitioner by one or both of her parents or her guardian or the petition must be dismissed.

Section 2. Provides that if any provision of this act is held invalid, it does not affect the rest of the act, as the provisions of this act are severable.

Section 3. Provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

² *In re Amendments to the Florida Rules of Juvenile Procedure; Forms...* 907 So.2d 1161 (Fla.2005).

³ *In re Amendments to the Florida Rules of Juvenile Procedure; Forms...* 907 So.2d 1161 (Fla.2005).

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Juveniles will receive a benefit in getting free representation through the guardian ad litem program.

C. Government Sector Impact:

There will be a cost to the guardian ad litem program, although the exact amount has not yet been determined. There also may be costs to the court administrator in facilitating the appointment of a guardian ad litem in each case.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By striking the cross references in subsection (4)(c) and (4)(d), it is unclear how courts will interpret these paragraphs. One possibility is that the court will evaluate a petition based solely on a single paragraph based on the content of the petition. However, it could also be interpreted that even if the petitioner meets the conditions of paragraph (c), without the cross-reference, the petitioner would also have to meet the conditions of paragraph (d) or the court would have to dismiss the petition. Thus the petitioner would have to be determined sufficiently mature and be a victim of child abuse or sexual abuse by one or both of her parents or her guardian in order to be granted a waiver of the parental notice.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
