

1 A bill to be entitled
 2 An act relating to parental notice of abortion; amending
 3 s. 390.01114, F.S.; revising the definition of the term
 4 "constructive notice"; revising notice requirements
 5 relating to the termination of a pregnancy of a minor;
 6 providing exceptions to the notice requirements; revising
 7 procedure for judicial waiver of notice; providing for the
 8 minor to petition for a hearing within a specified time;
 9 providing that in a hearing relating to waiving the
 10 requirement for parental notice, the court consider
 11 certain additional factors, including whether the minor's
 12 decision to terminate her pregnancy was due to undue
 13 influence; providing procedure for appeal if judicial
 14 waiver of notice is not granted; requiring Supreme Court
 15 reports to the Governor and Legislature to include
 16 additional information; requiring mandatory reporting of
 17 child abuse; providing for construction of the act and
 18 Legislative intent; providing for severability; providing
 19 an effective date.

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

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

25 390.01114 Parental Notice of Abortion Act.—

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

28 (2) DEFINITIONS.—As used in this section, the term:

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

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

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

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

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

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

52 (3) NOTIFICATION REQUIRED.—

53 (a) Actual notice shall be provided by the physician
54 performing or inducing the termination of pregnancy before the
55 performance or inducement of the termination of the pregnancy of
56 a minor. The notice may be given by a referring physician. The

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

84 | (b) Notice is not required if:

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85 1. In the physician's good faith clinical judgment, a
86 medical emergency exists and there is insufficient time for the
87 attending physician to comply with the notification
88 requirements. If a medical emergency exists, the physician
89 should make reasonable attempts, whenever possible without
90 endangering the minor, to contact the parent or legal guardian.
91 The physician may proceed but must document reasons for the
92 medical necessity in the patient's medical records and must
93 provide notice directly, in person or by telephone, to the
94 parent or legal guardian, including details of the medical
95 emergency and any additional risks to the minor. If the parent
96 or legal guardian has not been notified within 24 hours after
97 the termination of the pregnancy, the physician must provide
98 notice in writing, including details of the medical emergency
99 and any additional risks to the minor, signed by the physician,
100 to the last known address of the parent or legal guardian of the
101 minor, by first class mail and by certified mail, return receipt
102 requested, with delivery restricted to the parent or legal
103 guardian;

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

109 3. Notice is waived by the minor who is or has been
110 married or has had the disability of nonage removed under s.
111 743.015 or a similar statute of another state;

112 4. Notice is waived by the patient because the patient has

113 a minor child dependent on her; or

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

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

118 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.—

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

130 (b)1. Court proceedings under this section ~~subsection~~ must
 131 be given precedence over other pending matters to the extent
 132 necessary to ensure that the court reaches a decision promptly.
 133 The court shall rule, and issue written findings of fact and
 134 conclusions of law, within 3 business days ~~48 hours~~ after the
 135 petition is filed, except that the 3-business-day ~~48-hour~~
 136 limitation may be extended at the request of the minor. If the
 137 court fails to rule within the 3-business-day ~~48-hour~~ period and
 138 an extension has not been requested, the minor may then
 139 immediately petition for a hearing upon the expiration of the 3-
 140 business-day period to the chief judge of the circuit, who must

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141 ensure a hearing is held within 48 hours after receipt of the
142 minor's petition and an order is entered within 24 hours after
143 the hearing ~~the petition is granted, and the notice requirement~~
144 ~~is waived.~~

145 2. If the circuit court does not grant judicial waiver of
146 notice, the minor has the right to appeal. An appellate court
147 must rule within 7 days after receipt of appeal, but a ruling
148 may be remanded with further instruction for a ruling within 3
149 business days after the remand. The reason for overturning a
150 ruling on appeal must be based on abuse of discretion by the
151 court and may not be based on the weight of the evidence
152 presented to the circuit court since the proceeding is a
153 nonadversarial 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 the court shall consider
162 include:

- 163 1. The minor's:
164 a. Age.
165 b. Overall intelligence.
166 c. Emotional development and stability.
167 d. Credibility and demeanor as a witness.
168 e. Ability to accept responsibility.

169 f. Ability to assess both the immediate and long-range
 170 consequences of the minor's choices.

171 g. Ability to understand and explain the medical risks of
 172 terminating her pregnancy and to apply that understanding to her
 173 decision.

174 2. Whether there may be any undue influence by another on
 175 the minor's decision to have an abortion.

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

194 (e) A court that conducts proceedings under this section
 195 shall:

196 1. Provide for a written transcript of all testimony and

197 proceedings; ~~and~~

198 2. Issue a final written order containing ~~and specific~~
 199 factual findings and legal conclusions supporting its decision,
 200 including factual findings and legal conclusions relating to the
 201 maturity of the minor as provided under paragraph (c); and ~~shall~~

202 3. Order that a confidential record be maintained, as
 203 required under s. 390.01116. ~~At the hearing, the court shall~~
 204 ~~hear evidence relating to the emotional development, maturity,~~
 205 ~~intellect, and understanding of the minor, and all other~~
 206 ~~relevant evidence.~~

207 (f) All hearings under this section, including appeals,
 208 shall remain confidential and closed to the public, as provided
 209 by court rule.

210 (g) ~~(f)~~ An expedited appeal shall be made available, as the
 211 Supreme Court provides by rule, to any minor to whom the circuit
 212 court denies a waiver of notice. An order authorizing a
 213 termination of pregnancy without notice is not subject to
 214 appeal.

215 (h) ~~(g)~~ ~~No~~ Filing fees or court costs may not ~~shall~~ be
 216 required of any pregnant minor who petitions a court for a
 217 waiver of parental notification under this subsection at either
 218 the trial or the appellate level.

219 (i) ~~(h)~~ ~~A~~ ~~No~~ county is not ~~shall be~~ obligated to pay the
 220 salaries, costs, or expenses of any counsel appointed by the
 221 court under this subsection.

222 (5) PROCEEDINGS.—The Supreme Court is requested to adopt
 223 rules and forms for petitions to ensure that proceedings under
 224 subsection (4) are handled expeditiously and in a manner

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

228 (6) REPORT.—The Supreme Court, through the Office of the
229 State Courts Administrator, shall report by February 1 of each
230 year to the Governor, the President of the Senate, and the
231 Speaker of the House of Representatives on the number of
232 petitions filed under subsection (4) for the preceding year, and
233 the timing and manner of disposal of such petitions by each
234 circuit court. For each petition resulting in a waiver of
235 notice, the reason for the waiver shall be included in the
236 report.

237 (7) MANDATORY CHILD ABUSE REPORTING.—The requirements of
238 s. 39.201, relating to mandatory reports of child abuse, apply
239 to this section.

240 Section 2. It is the intent of the Legislature with
241 respect to this act to accord the utmost comity and respect to
242 the constitutional prerogatives of Florida's judiciary, and
243 nothing in this act should be construed as an effort to impinge
244 upon those prerogatives. To that end, if any court of competent
245 jurisdiction enters a final judgment concluding or declaring
246 that any provision of this act improperly encroaches on the
247 authority of the Florida Supreme Court to determine the rules of
248 practice and procedure in Florida courts, the Legislature
249 intends that such provision be construed as a request for a rule
250 change pursuant to s. 2, Art. V of the State Constitution and
251 not as a mandatory legislative directive.

252 Section 3. If any provision of this act or its application

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253 to any individual or circumstance is held invalid, the
254 invalidity does not affect other provisions or applications of
255 this act which can be given effect without the invalid provision
256 or application, and to this end the provisions of this act are
257 severable.

258 Section 4. This act shall take effect upon becoming a law.