

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 certain
 11 additional factors, including whether the minor's decision
 12 to terminate her pregnancy was due to undue influence;
 13 providing procedure for appeal if judicial waiver of
 14 notice is not granted; requiring Supreme Court reports to
 15 the Governor and Legislature to include additional
 16 information; requiring mandatory reporting of child abuse;
 17 providing for severability; providing an effective date.

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

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

23 390.01114 Parental Notice of Abortion Act.—

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

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

27 (a) "Actual notice" means notice that is given directly,
 28 in person or by telephone, to a parent or legal guardian of a

29 | minor, by a physician, at least 48 hours before the inducement
30 | or performance of a termination of pregnancy, and documented in
31 | the minor's files.

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

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

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

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

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

50 | (3) NOTIFICATION REQUIRED.—

51 | (a) Actual notice shall be provided by the physician
52 | performing or inducing the termination of pregnancy before the
53 | performance or inducement of the termination of the pregnancy of
54 | a minor. The notice may be given by a referring physician. The
55 | physician who performs or induces the termination of pregnancy
56 | must receive the written statement of the referring physician

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57 certifying that the referring physician has given notice. If
58 actual notice is not possible after a reasonable effort has been
59 made, the physician performing or inducing the termination of
60 pregnancy or the referring physician must give constructive
61 notice. Notice given under this subsection by the physician
62 performing or inducing the termination of pregnancy must include
63 the name and address of the facility providing the termination
64 of pregnancy and the name of the physician providing notice.
65 Notice given under this subsection by a referring physician must
66 include the name and address of the facility where he or she is
67 referring the minor and the name of the physician providing
68 notice. If actual notice is provided by telephone, the physician
69 must actually speak with the parent or guardian, and must record
70 in the minor's medical file the name of the parent or guardian
71 provided notice, the phone number dialed, and the date and time
72 of the call. If constructive notice is given, the physician must
73 document that notice by placing copies of any document related
74 to the constructive notice, including, but not limited to, a
75 copy of the letter and the return receipt, in the minor's
76 medical file. Actual notice given by telephone shall be
77 confirmed in writing, signed by the physician, and mailed to the
78 last known address of the parent or legal guardian of the minor,
79 by first class mail and by certified mail, return receipt
80 requested, with delivery restricted to the parent or legal
81 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 but must document reasons for the
90 medical necessity in the patient's medical records and must
91 provide notice directly, in person or by telephone, to the
92 parent or legal guardian, including details of the medical
93 emergency and any additional risks to the minor. If the parent
94 or legal guardian has not been notified within 24 hours after
95 the termination of the pregnancy, the physician must provide
96 notice in writing, including details of the medical emergency
97 and any additional risks to the minor, signed by the physician,
98 to the last known address of the parent or legal guardian of the
99 minor, by first class mail and by certified mail, return receipt
100 requested, with 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;

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 the minor ~~she~~ resides for a waiver of the
 120 notice 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 section ~~subsection~~ must
 129 be 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 3 business days ~~48 hours~~ after the
 133 petition is filed, except that the 3-business-day ~~48-hour~~
 134 limitation may be extended at the request of the minor. If the
 135 court fails to rule within the 3-business-day ~~48-hour~~ period and
 136 an extension has not been requested, the minor may then
 137 immediately petition for a hearing upon the expiration of the 3-
 138 business-day period to the chief judge of the circuit, who must
 139 ensure a hearing is held within 48 hours after receipt of the
 140 minor's petition and an order is entered within 24 hours after

141 ~~the hearing the petition is granted, and the notice requirement~~
142 ~~is waived.~~

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

- 161 1. The minor's:
162 a. Age.
163 b. Overall intelligence.
164 c. Emotional development and stability.
165 d. Credibility and demeanor as a witness.
166 e. Ability to accept responsibility.
167 f. Ability to assess both the immediate and long-range
168 consequences of the minor's choices.

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

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

174 3. Whether the minor is aware that:

175 a. Payment of medical expenses associated with carrying
176 the child to term is available for eligible pregnant minors
177 under Medicaid, the Florida Healthy Kids program, many private
178 insurance plans, and numerous faith-based and philanthropic
179 resources; and

180 b. There is a shortage of newborn babies available for
181 adoption, and that the demand is very high from qualified
182 families.

183 (d) If the court finds, by a preponderance of the
184 evidence, that the petitioner is the victim ~~there is evidence~~ of
185 child abuse or sexual abuse inflicted ~~of the petitioner~~ by one
186 or both of her parents or her guardian, or by clear and
187 convincing evidence that the notification of a parent or
188 guardian is not in the best interest of the petitioner, the
189 court shall issue an order authorizing the minor to consent to
190 the performance or inducement of a termination of pregnancy
191 without the notification of a parent or guardian. The best-
192 interest standard may not include financial best interest or
193 financial considerations or the potential financial impact on
194 the minor or the minor's family if the minor does not terminate
195 the pregnancy. If the court finds evidence of child abuse or
196 sexual abuse of the minor petitioner by any person, the court

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197 shall report the evidence of child abuse or sexual abuse of the
 198 petitioner, as provided in s. 39.201. If the court does not make
 199 the finding specified in this paragraph or paragraph (c), it
 200 must dismiss the petition.

201 (e) A court that conducts proceedings under this section
 202 shall:

203 1. Provide for a written transcript of all testimony and
 204 proceedings; ~~and~~

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

209 3. Order that a confidential record be maintained, as
 210 required under s. 390.01116. ~~At the hearing, the court shall~~
 211 ~~hear evidence relating to the emotional development, maturity,~~
 212 ~~intellect, and understanding of the minor, and all other~~
 213 ~~relevant evidence.~~

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

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

222 (h) ~~(g)~~ ~~No~~ Filing fees or court costs may not ~~shall~~ be
 223 required of any pregnant minor who petitions a court for a
 224 waiver of parental notification under this subsection at either

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225 the trial or the appellate level.

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

229 (5) PROCEEDINGS.—The Supreme Court is requested to adopt
 230 rules and forms for petitions to ensure that proceedings under
 231 subsection (4) are handled expeditiously and in a manner
 232 consistent with this act. The Supreme Court is also requested to
 233 adopt rules to ensure that the hearings protect the minor's
 234 confidentiality and the confidentiality of the proceedings.

235 (6) REPORT.—The Supreme Court, through the Office of the
 236 State Courts Administrator, shall report by February 1 of each
 237 year to the Governor, the President of the Senate, and the
 238 Speaker of the House of Representatives on the number of
 239 petitions filed under subsection (4) for the preceding year, and
 240 the timing and manner of disposal of such petitions by each
 241 circuit court. For each petition resulting in a waiver of
 242 notice, the reason the waiver was granted shall be included in
 243 the report according to whether the court found the minor to be
 244 either sufficiently mature, a victim of sexual abuse, or a
 245 victim of child abuse or found that notification of a parent or
 246 guardian was not in the best interest of the minor. The report
 247 shall also indicate the number of petitions filed by minors
 248 whose primary residence was outside this state at the time their
 249 petition was filed.

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

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253 Section 2. If any provision of this act or its application
254 to any individual or circumstance is held invalid, the
255 invalidity does not affect other provisions or applications of
256 this act which can be given effect without the invalid provision
257 or application, and to this end the provisions of this act are
258 severable.

259 Section 3. This act shall take effect upon becoming a law.