

By Senator Gardiner

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

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

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

26           390.01114 Parental Notice of Abortion Act.—

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

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

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

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

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

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

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

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

53 (3) NOTIFICATION REQUIRED.—

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

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

85 (b) Notice is not required if:

86 1. In the physician's good faith clinical judgment, a  
87 medical emergency exists and there is insufficient time for the

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

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

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

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

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

116 (c) Violation of this subsection by a physician constitutes

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117 grounds for disciplinary action under s. 458.331 or 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 immediately  
139 petition for a hearing upon the expiration of the 3-business-day  
140 period to the chief judge of the circuit, who must ensure a  
141 hearing is held within 48 hours after receipt of the minor's  
142 petition and an order is entered within 24 hours after the  
143 hearing ~~the petition is granted, and the notice requirement is~~  
144 ~~waived.~~

145 2. If the circuit court does not grant judicial waiver of

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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

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175 the minor's decision to have an abortion.

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

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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  
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



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

249 Section 3. If any provision of this act or its application  
250 to any individual or circumstance is held invalid, the  
251 invalidity does not affect other provisions or applications of  
252 this act which can be given effect without the invalid provision  
253 or application, and to this end the provisions of this act are  
254 severable.

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