

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 a procedure for appeal if judicial  
 14          waiver of notice is not granted; requiring that the court  
 15          order contain factual findings and legal conclusions;  
 16          requiring Supreme Court reports to the Governor and  
 17          Legislature to include additional information; providing  
 18          for severability; providing an effective date.

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

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

24           390.01114 Parental Notice of Abortion Act.—

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

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

28           (a) "Actual notice" means notice that is given directly,

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

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

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

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

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

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

51 | (3) NOTIFICATION REQUIRED.—

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

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

83 | (b) Notice is not required if:

84 | 1. In the physician's good faith clinical judgment, a

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

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

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

111 |         4. Notice is waived by the patient because the patient has  
112 | a minor child dependent on her; or

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

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

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

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

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

141 petition and an order is entered within 24 hours after the  
 142 hearing the petition is granted, and the notice requirement is  
 143 waived.

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

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

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

169 consequences of the minor's choices.

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

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

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

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

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

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

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

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

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

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

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

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



225 adopt rules to ensure that the hearings protect the minor's  
226 confidentiality and the confidentiality of the proceedings.

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

236 Section 2. If any provision of this act or its application  
237 to any individual or circumstance is held invalid, the  
238 invalidity does not affect other provisions or applications of  
239 the act which can be given effect without the invalid provision  
240 or application, and to this end the provisions of this act are  
241 severable.

242 Section 3. This act shall take effect October 1, 2011, or  
243 upon the adoption of rules and forms pursuant to s.  
244 390.01114(5), Florida Statutes, by the Supreme Court for  
245 purposes of the amendment of s. 390.01114, Florida Statutes, by  
246 this act, whichever occurs earlier.