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 HB 1247, Engrossed 1

2011 Legislature

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,

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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

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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

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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

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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

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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

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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

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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.