The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL:	SB 1770
INTRODUCER:	Senator Hays
SUBJECT:	Parental Notice of Abortion
DATE:	April 25, 2011
REVISED:	04/25/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Favorable**
2.	Munroe	Maclure	JU	**Fav/1 amendment**
3.	Bradford	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☒	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill amends the statute relating to parental notification of an abortion to be performed on a minor by:

- Defining "constructive notice" to include notice by writing that must be mailed to a minor's parent or legal guardian prior to the abortion by certified mail *and* by first-class mail.
- Requiring notice that is given by telephone to a parent or legal guardian to be confirmed in writing, signed by the physician, and mailed to the parent or legal guardian of the minor by first-class and certified mail.
- Requiring a physician to make reasonable attempts to contact the parent or legal guardian, whenever possible, during a medical emergency that renders the abortion medically necessary, without endangering the minor.
- Requiring the physician to provide notice directly to a parent or legal guardian of the medical emergency requiring an abortion and any additional risks to the minor and if no notice is directly provided, then notice is required in writing to the parent or legal guardian, which must be mailed by first-class and certified mail.
- Providing that a parent or guardian's legal right to notice can only be waived if the written waiver is notarized, dated not more than 30 days before the abortion, and contains a specific waiver of the parent or legal guardian's right to notice of the minor's abortion.

- Reducing the number of courts in which a minor is able to file a petition for waiver of parental notice.
- Changing the time within which a court must rule on a minor's petition for a waiver of parental notice from 48 hours to 3 business days.
- Removing the automatic grant of a petition when a court fails to rule within a certain time.
- Providing that a minor may have her petition heard by a chief judge of the circuit within 48 hours of filing the petition when a circuit court has not ruled within 3 business days.
- Providing the minor with the right to appeal a court decision that does not grant judicial waiver of parental notice, providing the timeline within which the appellate court must rule, and providing the standard of review the appellate court must use.
- Requiring the court to consider specific factors when determining whether the minor is sufficiently mature to decide whether to terminate her pregnancy.
- Changing the standard upon which a court must find that the notification of a parent or guardian of the abortion is not in the best interest of the minor, from preponderance of the evidence to clear and convincing evidence.
- Providing that when the court considers what is in the best-interest of the minor, the court is not to consider financial implications for the minor or the minor's family.
- Requiring the final written order by the court to include its factual findings determining the maturity of the minor.
- Requiring the Office of State Courts Administrator to include in its annual report to the Governor and Legislature, regarding the number of petitions filed for a waiver of parental notice, the reason for each waiver of notice granted.

The bill also includes a severability clause, which severs any provision of the bill that is held invalid and saves the remaining provisions.

Physicians performing abortions will incur minor costs associated with the parental notification requirements contained in this bill. There will be a workload increase on the State Courts System which is cannot be determined. Since the workload increase cannot be determined the fiscal impact is correspondingly indeterminate.

This bill amends s. 390.01114, F.S., and creates an undesignated section of law.

II. Present Situation:

Background

Under Florida law the term "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[1] "Viability" means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.[2] Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). An abortion can be performed by surgical or medical means (medicines that induce

[1] Section 390.011, F.S.
[2] Section 390.0111(4), F.S.

a miscarriage).[3] An abortion in Florida must be performed by a physician licensed to practice medicine or osteopathic medicine who is licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[4] No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.[5]

In 2007, a total of 91,954 abortions were performed in Florida. For 83,890 of those, the gestational age of the fetus was 12 weeks and under; for 8,063, the gestational age of the fetus was 13 to 24 weeks; and for one, the gestational age was over 25 weeks.[6]

Parental Notice of Abortion Act[7]

In 1999, the Legislature enacted a law requiring parents of minors to be notified prior to the minor's termination of a pregnancy. This law was constitutionally challenged on grounds that the act violated a person's right to privacy under the Florida Constitution. The Florida Supreme Court concluded that the act violated Florida's constitutional right to privacy because the minor was not afforded a mechanism by which to bypass parental notification if certain exigent circumstances existed.[8] In response to the court's decision, the Legislature proposed a constitutional amendment authorizing the Florida Legislature, notwithstanding a minor's right to privacy under the Florida Constitution, to require a physician to notify a minor's parent or guardian prior to termination of the minor's pregnancy, which was subsequently ratified by Florida voters.[9] The amendment provides:

> The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.[10]

The Legislature responded to this authorization by enacting the Parental Notice of Abortion Act (Act).[11]

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[3] Suzanne R. Trupin, M.D., *Elective Abortion*, December 21, 2010, *available at* http://www.emedicine.com/med/TOPIC3312.HTM (last visited Mar. 1, 2011).
[4] Sections 390.0111(2) and 390.011(7), F.S.
[5] Section 390.0111(8), F.S.
[6] Florida Vital Statistics Annual Report 2007, *available at* http://www.flpublichealth.com/VSBOOK/VSBOOK.aspx# (last visited Mar. 31, 2011).
[7] Section 390.01114, F.S.
[8] *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).
[9] See FLA. CONST. art. X, s. 22.
[10] *Id.*
[11] Chapter 2005-52, s. 2, Laws of Fla.

A physician performing an abortion must provide "actual notice"[12] to the parent or legal guardian of a minor[13] before performing an abortion on a minor. The notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort has been made, the physician performing the abortion or the referring physician must give "constructive notice."[14]

Notice given by the physician performing the abortion must include the name and address of the facility providing the abortion and the name of the physician providing the notice. Notice given by a referring physician must include the name and address of the facility where he or she is referring the minor and the name of the physician providing the notice.

If actual notice is provided by telephone, the physician must actually speak with the parent or guardian, and must record in the minor's medical file the name of the parent or guardian to whom the notice was provided, the phone number dialed, and the date and time of the call. If constructive notice is given, the physician must document that notice by placing copies of any document related to the constructive notice, including, but not limited to, a copy of the letter and the return receipt, in the minor's medical file.

There are several exceptions to the notice requirement. Notice is not required if:[15]

- In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements. If a medical emergency exists, the physician may proceed but must document reasons for the medical necessity in the patient's medical records.
- Notice is waived in writing by the person who is entitled to notice.
- Notice is waived by the minor who is or has been married or has had the disability of nonage removed under s. 743.015, F.S., or a similar statute of another state.
- Notice is waived by the patient because the patient has a minor child dependent on her.
- Notice is waived by judicial waiver.

A physician who violates any of the parental notice requirements may be subject to disciplinary action under s. 458.331 or s. 459.015, F.S.[16]

[12] "Actual notice" means notice that is given directly, in person or by telephone, to a parent or legal guardian of a minor, by a physician, at least 48 hours before the inducement or performance of a termination of pregnancy, and documented in the minor's files. Section 390.01114(2)(a), F.S.

[13] A minor is a person under the age of 18 years. Section 390.01114(2)(f), F.S.

[14] "Constructive notice" means notice that is given in writing, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After the 72 hours have passed, delivery is deemed to have occurred. Section 390.01114(2)(c), F.S.

[15] Section 390.01114(3)(b), F.S.

[16] The Department of Health, or the appropriate board, may suspend or permanently revoke a license; restrict a practice or license; impose an administrative fine not to exceed $10,000 for each count or separate offense; issue a reprimand or letter of concern; place the licensee on probation for a period of time and subject it to conditions; take corrective action; impose an administrative fine for violations regarding patient rights; refund fees billed and collected from the patient or a third party on behalf of the patient; or require that the practitioner undergo remedial education.

A minor may petition any circuit court within the jurisdiction of the District Court of Appeal in which she resides for a waiver of the parental notice requirement and may participate in proceedings on her own behalf. The petition may be filed under a pseudonym or through the use of initials, as provided by court rule. The petition must include a statement that the petitioner is pregnant and notice has not been waived. The court is required to advise the minor that she has a right to court-appointed counsel and must provide her with counsel upon her request at no cost to the minor.[17]

These court proceedings must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court is required to rule, and issue written findings of fact and conclusions of law, within 48 hours[18] after the petition is filed, except that the 48-hour limitation may be extended at the request of the minor. If the court fails to rule within the 48-hour period and an extension has not been requested, the petition is granted, and the notice requirement is waived.[19]

If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian, otherwise the court must dismiss the petition.

If the court finds, by a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the petitioner by one or both of her parents or her guardian, or that the notification of a parent or guardian is not in the best interest of the petitioner, the court is required to issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian, otherwise the court must dismiss the petition. If the court finds evidence of child abuse or sexual abuse of the minor petitioner by any person, the court must report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201, F.S.[20]

Section 390.01114, F.S., also provides for the court procedures, including an appeals process, for hearings on a petition for waiver of parental notice.[21]

The Supreme Court of Florida, through the Office of the State Courts Administrator, is required to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed for a waiver of parental notice for the preceding year, and the timing and manner of disposal of such petitions by each circuit court.[22] The Office of the State Courts Administrator reports that from January through December 2010 there were 381 petitions filed for a waiver of parental notice; 371 of those

[17] Section 390.01114(4)(a), F.S.
[18] The Florida Supreme Court defines "48 hours" as meaning exactly 48 hours from the filing of the petition and specifically includes weekends, holidays, and times after regular business hours of the court. Rule 8.820(d), Florida Rules of Juvenile Procedure.
[19] Section 390.01114(4)(b), F.S.
[20] Section 39.201, F.S., requires that that finding of such evidence must be reported to the Department of Children and Family Services.
[21] *See* s. 390.01114(4), F.S.
[22] Section 390.01114(6), F.S.

petitions were granted, 10 of those petitions were dismissed, and none of the petitions were granted by default because the court did not enter an order within 48 hours.[23]

Relevant Case Law

In 1973, the landmark case of *Roe v. Wade* established that restrictions on a woman's access to secure an abortion are subject to a strict scrutiny standard of review.[24] In *Roe*, the U.S. Supreme Court determined that a woman's right to have an abortion is part of the fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, justifying the highest level of review.[25] Specifically, the Court concluded that: (1) during the first trimester, the state may not regulate the right to an abortion; (2) after the first trimester, the state may impose regulations to protect the health of the mother; and (3) after viability, the state may regulate and proscribe abortions, except when it is necessary to preserve the life or health of the mother.[26] Therefore, a state regulation limiting these rights may be justified only by a compelling state interest, and the legislative enactments must be narrowly drawn to express only legitimate state interests at stake.[27]

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court relaxed the standard of review in abortion cases involving adult women from strict scrutiny to unduly burdensome, while still recognizing that the right to an abortion emanates from the constitutional penumbra of privacy rights.[28] In *Planned Parenthood*, the Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference.[29] The Court concluded that the state may regulate the abortion as long as the regulation does not impose an undue burden on a woman's decision to choose an abortion.[30] If the purpose of a provision of law is to place substantial obstacles in the path of a woman seeking an abortion before viability, it is invalid; however, after viability the state may restrict abortions if the law contains exceptions for pregnancies endangering a woman's life or health.[31]

The unduly burdensome standard as applied in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which is generally considered to be a hybrid between strict scrutiny and intermediate level scrutiny, shifted the Court's focus to whether a restriction creates a substantial obstacle to access. This is the prevailing standard today applied in cases in which abortion access is statutorily restricted.

However, the undue burden standard was held not to apply in Florida. The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours of actual notice to one parent or to the legal guardian of a pregnant minor

[23] Information received on March 23, 2011, from the Office of the State Courts Administrator via e-mail to Senate Health Regulation Committee professional staff. A copy of the email is on file with the committee.
[24] 410 U.S. 113 (1973).
[25] 410 U.S. 113, 154 (1973).
[26] 410 U.S. 113, 162-65 (1973).
[27] 410 U.S. 113, 152-56 (1973).
[28] 505 U.S. 833, 876-79 (1992).
[29] *Id.*
[30] *Id*.
[31] *Id.*

before terminating the pregnancy of the minor. Although a judicial waiver procedure was included, the act was never enforced.[32] In 2003, the Florida Supreme Court[33] ruled this legislation unconstitutional on the grounds that it violated a minor's right to privacy, as expressly protected under Article I, s. 23 of the Florida Constitution.[34] Citing the principle holding of *In re T.W.,*[35] the Court reiterated that, as the privacy right is a fundamental right in Florida, any restrictions on privacy warrant a strict scrutiny review, rather than that of an undue burden. Here, the Court held that the state failed to show a compelling state interest, and, therefore, the Court permanently enjoined the enforcement of the Parental Notice of Abortion Act.[36]

In the case of *In re Petition of Jane Doe,*[37] the Second District Court of Appeal of Florida provided an in-depth review of considerations by courts throughout the country in assessing maturity, for purposes of determining whether to permit a judicial waiver of the parental notification requirement for an abortion.

The *Jane Doe* case noted that the trial courts have drawn inferences from the minor's composure, analytic ability, appearance, thoughtfulness, tone of voice, expressions, and her ability to articulate her reasoning and conclusions.[38] The *Jane Doe* case also noted that another court, in its attempt to define maturity, observed:

> Manifestly, as related to a minor's abortion decision, maturity is not solely a matter of social skills, level of intelligence or verbal skills. More importantly, it calls for experience, perspective and judgment. As to experience, the minor's prior work experience, experience in living away from home, and handling personal finances are some of the pertinent inquiries. Perspective calls for appreciation and understanding of the relative gravity and possible detrimental impact of each available option, as well as realistic perception and assessment of possible short term and long-term consequences of each of those options, particularly the abortion option. Judgment is of very great importance in determining maturity. The exercise of good judgment requires being fully informed so as to be able to weigh alternatives independently and realistically. Among other things, the minor's conduct is a measure of good judgment. Factors such as stress and ignorance of alternatives have been recognized as impediments

[32] *See* s. 390.01115, F.S. (repealed by s. 1, ch. 2005-52, Laws of Florida). Chapter 2005-52, Laws of Florida created s. 390.01114, F.S., the revised Parental Notice of Abortion Act.
[33] *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612, 619-20 (Fla. 2003)
[34] The constitutional right of privacy provision reads: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." FLA. CONST. art. I, s. 23.
[35] 551 So. 2d 1186, 1192 (Fla. 1989).
[36] *North Florida Women's Health and Counseling Services, supra* note 16, at 622 and 639-40.
[37] *In re Petition of Jane Doe*, 973 So. 2d 548 (Fla. 2d DCA 2008). The motion for rehearing en banc was denied. In this case, the court held that the juvenile failed to prove by clear and convincing evidence that she was sufficiently mature to warrant waiving the requirement for parental notification of abortion and also failed to establish that parental notification concerning abortion was not in her best interest.
[38] *Id.* at 552, citing *Ex parte Anonymous*, 806 So. 2d 1269, 1274 (Ala. 2001).

> to the exercise of proper judgment by minors, who because of those factors "may not be able intelligently to decide whether to have an abortion."[39]

The *Jane Doe* case further opined that another court similarly has stated that when evaluating maturity, pertinent factors include, but are not limited to, the minor's physical age, her understanding of the medical risks associated with the procedure as well as emotional consequences, her consideration of options other than abortion, her future educational and life plans, her involvement in civic activities, any employment, her demeanor and her seeking advice or emotional support from an adult.[40]

Finally, the *Jane Doe* case discussed that the Supreme Court of Texas, after surveying the decisions of other courts, wrote that those courts had inquired into how a minor might respond to certain contingencies, particularly assessing whether the minor will seek counseling in the event of physical or emotional complications. Many courts have assessed the minor's school performance and activities, as well as the minor's future and present life plans. A few courts have explicitly assessed the minor's character and judgment directly. Most of the decisions have also considered the minor's job experience and experience handling finances, particularly assessing whether the minor is aware of the financial obligations inherent in raising a child. Almost all courts conduct the maturity inquiry, either explicitly or implicitly, against the background circumstances of the minor's experience. These include the minor's relationship with her parents, whether she has social and emotional support, particularly from the male who would be a father, and other relevant life experiences.[41]

The *Jane Doe* case also addressed the contention that notification of the parent or guardian was not in the appellant's best interest. The court stated, some factors to be considered are: the minor's emotional or physical needs; the possibility of intimidation, other emotional injury, or physical danger to the minor; the stability of the minor's home and the possibility that notification would cause serious and lasting harm to the family structure; the relationship between the parents and the minor and the effect of notification on that relationship; and the possibility that notification may lead the parents to withdraw emotional and financial support from the minor.[42]

III. Effect of Proposed Changes:

This bill amends s. 390.01114, F.S., relating to parental notification of an abortion to be performed on a minor. This bill defines "constructive notice" to include notice by writing that must be mailed to a minor's parent or legal guardian 72 hours prior to the abortion by certified mail, return receipt requested with restricted delivery to the parent or legal guardian *and by first-class mail*.

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[39] *Id.* at 551, citing *H.B. v. Wilkinson,* 639 F.Supp. 952, 954 (D.Utah 1986), which cited *Am. Coll. of Obstetricians & Gynecologists v. Thornburgh,* 737 F.2d 283, 296 (Pa. 3d Cir.1984), *affirmed* 476 U.S. 747 (1986).
[40] *Id.* at 551-552, citing *In re Doe,* 924 So.2d 935, 939 (Fla. 1st DCA 2006).
[41] *Id.* at 552, citing *In re Doe 2*, 19 S.W.3d 249, 256 (Tex. 2000).
[42] *Id.* at 553, citing *In re Doe*, 932 So.2d 278, 285-86 (Fla. 2d DCA 2005); see also *In re Doe 2*, 166 P.3d 293, 296 (Colo. App. 2007); *In re Doe,* 19 Kan.App.2d 204, 866 P.2d 1069, 1075 (1994); *In re Doe 2,* 19 S.W.3d 278, 282 (Tex. 2000).

The bill requires actual notice that is given by telephone to be confirmed in writing, signed by the physician, and mailed to the parent or legal guardian of the minor by first-class and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian. Furthermore, the bill requires a physician to make reasonable attempts to contact the parent or legal guardian, whenever possible, during a medical emergency that renders the abortion medically necessary, without endangering the minor. The physician providing such notice of the medical emergency must do so directly by telephone or in person and must provide the parent or legal guardian with the details of the medical emergency and any additional risks to the minor. If the parent or legal guardian has not been notified within 24 hours after the abortion, the physician must provide the notice in writing and the notice must be signed by the physician. The written notice must be mailed to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

A physician does not have to provide parental notice if a parent or guardian waives his or her right to notice and the written waiver is notarized, dated not more than 30 days before the abortion, and contains a specific waiver of the parent or legal guardian's right to notice of the minor's abortion.

The number of courts in which a minor is able to file a petition for waiver of the parental notice requirement is reduced because the bill authorizes a minor to petition any circuit court in which she resides rather than any circuit court within the jurisdiction of the District Court of Appeal in which she resides.

The bill also changes the time within which a court must rule on a minor's petition for a waiver of parental notice from 48 hours to 3 business days and removes the automatic grant of a petition when a court fails to rule within a certain time. If the court fails to rule within 3 business days after the filing of the petition, the minor may immediately petition the chief judge of the circuit for a hearing, which must be held within 48 hours of receiving the minor's petition. The chief judge must enter an order within 24 hours after the hearing.

The bill provides the minor with the right to appeal a court decision that does not grant judicial waiver of parental notice, and provides that the appellate court must rule within 7 days after receipt of the appeal. However, if the court rules to remand the case, a ruling must take place within 3 business days after the remand. The standard that must be used by the appellate court when overturning a ruling on appeal is an abuse of discretion standard and the decision may not be based on the weight of the evidence presented to the circuit court because the proceeding is not adversarial.

The bill provides specific factors that the court must consider when determining whether the minor is sufficiently mature to decide whether to terminate her pregnancy. The factors the court is required to consider include:

- The minor's age, overall intelligence, emotional development and stability, credibility and demeanor as a witness, ability to accept responsibility, ability to assess both the immediate and long-range consequences of the minor's choices, and ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision; and

- Whether there may be an undue influence by another on the minor's decision to have an abortion.

The bill also changes the standard upon which a court must find that the notification of a parent or guardian of the abortion is not in the best interest of the minor, from preponderance of the evidence to clear and convincing evidence. The bill provides that the best-interest standard used by the court does not include financial best interest, financial considerations, or the potential financial impact on the minor or the minor's family if the minor does not terminate the pregnancy.

The bill requires the final written order by the court to include its factual findings determining the maturity of the minor.

The bill requires the Supreme Court, through the Office of the State Courts Administrator, to include in its annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the number of petitions filed for a waiver of parental notice, the reason for each waiver of notice granted.

The bill also includes a severability clause, which severs any provision of the bill that is held invalid and saves the remaining provisions.

The bill provides that it will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Under s. 390.01116, F.S., any information in a court record, which could be used to identify a minor petitioning a circuit court for a judicial waiver of parental notice, is confidential and exempt from public disclosure.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

If the bill, should it become law, is challenged because of its additional parental notification requirements, it will be subject to a strict scrutiny review, rather than that of an undue burden test pursuant to *North Florida Women's Health and Counseling*

Services, Inc., et al., v. State of Florida,[43] as discussed above under the subheading, "Relevant Case Law."

The bill may be challenged as encroaching on the Florida Supreme Court's specific constitutional authority to adopt rules for the practice and procedure in all courts. Section 3, Article II of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Section 2, Article V, of the Florida Constitution provides, among other things, that the supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently involved, and a requirement that no cause shall be dismissed because an improper remedy has been sought.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Physicians may incur additional administrative costs because the bill requires physicians to mail additional notifications.

C. Government Sector Impact:

The Office of the State Courts Administrator may incur administrative costs associated with changing its reporting requirements as required under the bill. The impact, if any, that the bill's requirements for additional court procedures will have on the state court system is indeterminate.

VI. Technical Deficiencies:

Lines 119 through 21 need clarification because a minor does not reside in a circuit court. An amendment might delete lines 119 through 120 and insert: (a) A minor may petition any circuit court in <u>the</u> ~~a~~ judicial circuit ~~within the jurisdiction of the District Court of Appeal~~.

VII. Related Issues:

Lines 144 through 152 of the bill provide for a minor's appellate rights and certain appellate procedures. Existing law, which can be found in lines 209 through 213 of the bill, already provide for a minor's right to appeal and provide that the Florida Supreme Court is to provide the

[43] 866 So. 2d 612 (Fla. 2003).

procedures for appellate review by rule. Therefore, these two provisions may conflict with each other.

The bill does not include an automatic waiver of the parental notice requirement if the court fails to rule after the Appellate Court remands for a ruling.

When the Legislature passed legislation in 2005 requiring parental notification before a minor could obtain an abortion, the legislation anticipated that the Florida Supreme Court would need to adopt rules to implement the legislation. The 2005 legislation provided an effective date "upon the adoption of rules and forms by the Supreme Court, but no later than July 1, 2005."[44] On June 30, 2005, the Florida Supreme Court adopted rule amendments on an emergency basis to accommodate the statutory provisions.[45] The bill provides an effective date upon becoming a law and may not provide sufficient time for the Supreme Court to adopt new rules or revise existing rules to accommodate the bill's provisions and obtain public comments.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 734128 by Judiciary on April 25, 2011:
Provides an effective date of upon the adoption of rules and forms by the Supreme Court, but no later than October 1, 2011.

[44] Chapter 2005-52, s. 3, Laws of Fla.
[45] *In re Amendments to the Florida Rules of Juvenile Procedure; Forms for Use with Rules of Juvenile Procedure; and the Florida Rules of Appellate Procedure-Judicial Waiver of Parental Notice of Termination of Pregnancy*, 907 So. 2d 1161 (Fla. 2005).