

Committee Substitute for Senate Bill No. 1598

An act relating to termination of pregnancies; creating s. 390.01115, F.S.; providing a short title; defining terms; prohibiting the performing or inducement of a termination of pregnancy upon a minor without specified notice; providing disciplinary action for violation; prescribing notice requirements; providing exceptions; prescribing procedure for judicial waiver of notice; providing for notice of right to counsel; providing for issuance of a court order authorizing consent to a termination of pregnancy without notification; providing for dismissal of petitions; requiring the issuance of written findings of fact and legal conclusions; providing for expedited appeal; providing for waiver of filing fees and court costs; precluding assumption of certain expenses by counties; requesting the Supreme Court to adopt rules; requiring the Supreme Court to report annually to the Governor and the Legislature; providing for severability; providing an effective date.

WHEREAS, the Legislature finds that immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences, and

WHEREAS, the unique medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature, and

WHEREAS, the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related, and

WHEREAS, parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the child, and

WHEREAS, parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion, and

WHEREAS, parental consultation is usually desirable and in the best interests of the minor, and

WHEREAS, the Legislature's purpose in enacting parental notice legislation is to further the important and compelling state interests of protecting minors against their own immaturity, fostering family unity and preserving the family as a viable social unit, protecting the constitutional rights of parents to rear children who are members of their household, and reducing teenage pregnancy and unnecessary abortion, and

WHEREAS, further legislative purposes are to ensure that parents are able to meet their high duty to seek out and follow medical advice pertaining to their children, stay apprised of the medical needs and physical condition of their children, and recognize complications that might arise following

medical procedures or services, to preserve the right of parents to pursue a civil action on behalf of their child before expiration of the statute of limitations period, if a facility or physician commits medical malpractice that results in injury to a child, and to prevent, detect, and prosecute batteries, rapes, and other crimes committed upon minors, and

WHEREAS, previous legislation requiring the consent of parents before a physician performed an abortion on their daughter was struck down by the Florida Supreme Court on the basis of the constitutional right of privacy, in the case of *In Re: T.W.*, and this legislation is designed to extend the protection of the law to minor girls and their parents in accordance with the State Constitution, NOW, THEREFORE,

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

Section 1. Section 390.01115, Florida Statutes, is created to read:

390.01115 Parental Notice of Abortion Act.—

(1) SHORT TITLE.—This section may be cited as the “Parental Notice of Abortion Act.”

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

(a) “Actual notice” means notice that is given directly, in person, or by telephone.

(b) “Child abuse” has the meaning ascribed in s. 39.0015(3) and refers to the acts of child abuse against a minor by a family member as defined in s. 741.28(2).

(c) “Constructive notice” means notice that is given by certified mail to the last known address of the parent or legal guardian of a minor, with delivery deemed to have occurred 48 hours after the certified notice is mailed.

(d) “Medical emergency” means a condition that, on the basis of a physician’s good-faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

(e) “Sexual abuse” has the meaning ascribed in s. 39.01 and refers to the acts of sexual abuse against a minor by a family member as defined in s. 741.28(2).

(3) NOTIFICATION REQUIRED.—

(a) A termination of pregnancy may not be performed or induced upon a minor unless the physician performing or inducing the termination of pregnancy has given at least 48 hours’ actual notice to one parent or to the legal guardian of the pregnant minor of his or her intention to perform or induce

the termination of pregnancy. The notice may be given by a referring physician. The physician who performs the termination of pregnancy must receive the written statement of the referring physician certifying that the referring physician has given notice. If actual notice is not possible after a reasonable effort has been made, the physician or his or her agent must give 48 hours' constructive notice.

(b) Notice is not required if:

1. 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;

2. Notice is waived in writing by the person who is entitled to notice;

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

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

5. Notice is waived under subsection (4).

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

(4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.—

(a) A minor may petition any circuit court for a waiver of the notice requirements of subsection (3) and may participate in proceedings on her own behalf. The petition must include a statement that the petitioner is pregnant and notice has not been waived. The court may appoint a guardian ad litem for her. A guardian ad litem appointed under this subsection shall act to maintain the confidentiality of the proceedings. The circuit court shall advise the minor that she has a right to court-appointed counsel and shall provide her with counsel upon her request.

(b) Court proceedings under this subsection must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within 48 hours 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.

(c) If the court finds, by clear evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy without the notification of a parent or guardian. If the court does not make the finding specified in this paragraph or paragraph (d), it must dismiss the petition.

(d) If the court finds, by clear 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 shall issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy without the notification of a parent or guardian. If the court does not make the finding specified in this paragraph or paragraph (c), it must dismiss the petition.

(e) A court that conducts proceedings under this section shall provide for a written transcript of all testimony and proceedings and issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor.

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

(g) No filing fees or court costs shall be required of any pregnant minor who petitions a court for a waiver of parental notification under this subsection at either the trial or the appellate level.

(h) No county shall be obligated to pay the salaries, costs, or expenses of any counsel appointed by the court under this subsection.

(5) PROCEEDINGS.—The Supreme Court is requested to adopt rules and forms for petitions to ensure that proceedings under subsection (4) are handled expeditiously and in a manner that will satisfy the requirements of state and federal courts.

(6) REPORT.—The Supreme Court, through the Office of the State Courts Administrator, shall 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 under subsection (4) for the preceding year, and the timing and manner of disposal of such petitions by each circuit court.

Section 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 3. This act shall take effect July 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.