

CHAPTER 2011-227

House Bill No. 1247

An act relating to parental notice of abortion; amending s. 390.01114, F.S.; revising the definition of the term “constructive notice”; revising notice requirements relating to the termination of a pregnancy of a minor; providing exceptions to the notice requirements; revising procedure for judicial waiver of notice; providing for the minor to petition for a hearing within a specified time; providing that in a hearing relating to waiving the requirement for parental notice, the court consider certain additional factors, including whether the minor’s decision to terminate her pregnancy was due to undue influence; providing a procedure for appeal if judicial waiver of notice is not granted; requiring that the court order contain factual findings and legal conclusions; requiring Supreme Court reports to the Governor and Legislature to include additional information; providing for severability; providing an effective date.

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

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

390.01114 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, 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.

(b) “Child abuse” has the same meaning as s. 39.0015(3).

(c) “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 first-class mail and 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.

(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.
- (f) “Minor” means a person under the age of 18 years.

(3) NOTIFICATION REQUIRED.—

(a) Actual notice shall be provided by the physician performing or inducing the termination of pregnancy before the performance or inducement of the termination of the pregnancy of a minor. The notice may be given by a referring physician. The physician who performs or induces 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 performing or inducing the termination of pregnancy or the referring physician must give constructive notice. Notice given under this subsection by the physician performing or inducing the termination of pregnancy must include the name and address of the facility providing the termination of pregnancy and the name of the physician providing notice. Notice given under this subsection 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 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 provided notice, 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. Actual notice given by telephone shall be confirmed in writing, signed by the physician, and 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.

(b) Notice is not required if:

1. 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 shall make reasonable attempts, whenever possible, without endangering the minor, to contact the parent or legal guardian, and may proceed, but must document reasons for the medical necessity in the patient’s medical records. The physician shall provide notice directly, in person or by telephone, to the parent or legal guardian, including 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 termination of the pregnancy, the physician shall provide notice in writing, including details of the medical emergency and any additional risks to the minor, signed by the physician, 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;

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

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 ~~in a judicial circuit within the jurisdiction of the District Court of Appeal~~ in which the minor she resides for a waiver of the notice requirements of subsection (3) 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 shall advise the minor that she has a right to court-appointed counsel and shall provide her with counsel upon her request at no cost to the minor.

(b)1. 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 3 business days ~~48 hours~~ after the petition is filed, except that the ~~3-business-day~~ 48-hour limitation may be extended at the request of the minor. If the court fails to rule within the ~~3-business-day~~ 48-hour period and an extension has not been requested, the minor may immediately petition for a hearing upon the expiration of the 3-business-day period to the chief judge of the circuit, who must ensure a hearing is held within 48 hours after receipt of the minor's petition and an order is entered within 24 hours after the hearing the petition is granted, and the notice requirement is waived.

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

(c) If the court finds, by clear and convincing 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. Factors the court shall consider include:

1. The minor's:

a. Age.

b. Overall intelligence.

c. Emotional development and stability.

d. Credibility and demeanor as a witness.

e. Ability to accept responsibility.

f. Ability to assess both the immediate and long-range consequences of the minor's choices.

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

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

(d) If the court finds, by a preponderance of the evidence, that the petitioner is the victim ~~there is evidence~~ of child abuse or sexual abuse inflicted of the petitioner by one or both of her parents or her guardian, or by clear and convincing evidence 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. The best-interest standard does not include financial best interest or financial considerations or the potential financial impact on the minor or the minor's family if the minor does not terminate the pregnancy. If the court finds evidence of child abuse or sexual abuse of the minor petitioner by any person, the court shall report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201. 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:

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

2. Issue a final written order containing and specific factual findings and legal conclusions supporting its decision, including factual findings and legal

conclusions relating to the maturity of the minor as provided under paragraph (c); and shall

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

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

(g)(f) An expedited appeal shall be made 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.

(h)(g) No Filing fees or court costs may not 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.

(i)(h) A No county is not 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 consistent with this act. The Supreme Court is also requested to adopt rules to ensure that the hearings protect the minor's confidentiality and the confidentiality of the proceedings.

(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. For each petition resulting in a waiver of notice, the reason for the waiver shall be included in the report.

Section 2. If any provision of this act or its application to any individual or circumstance is held invalid, the invalidity does 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 severable.

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

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.