

1 A bill to be entitled
2 An act relating to abortion; amending s. 390.0111, F.S.;
3 requiring that third trimester abortions be performed in a
4 hospital; providing for disciplinary action for violation
5 of specified provisions; requiring an ultrasound to be
6 performed on any woman obtaining an abortion; specifying
7 who must perform an ultrasound; providing that the
8 ultrasound must be reviewed with the patient prior to the
9 woman giving informed consent; specifying who must review
10 the ultrasound with the patient; providing that the woman
11 must certify in writing that she declined to review the
12 ultrasound and did so of her own free will and without
13 undue influence; providing an exemption to view the
14 ultrasound for women who are the victims of rape, incest,
15 domestic violence, or human trafficking or for women who
16 have a serious medical condition necessitating the
17 abortion; revising requirements for printed materials;
18 amending s. 390.01114, F.S.; revising provisions relating
19 to parental notice of abortion; requiring the appointment
20 of a guardian ad litem for a minor who petitions for a
21 waiver of the notice requirements; specifying factors to
22 be considered in determining whether a minor is
23 sufficiently mature to waive the notice requirements;
24 revising provisions relating to confidentiality of
25 hearings; requiring that an annual report concerning
26 waiver proceedings provide additional information;
27 amending s. 390.012, F.S.; correcting a cross-reference;
28 providing that agency rules shall prohibit the performance

29 of third trimester abortions other than in a hospital;
 30 conforming provisions; requiring ultrasounds for all
 31 patients; requiring that live ultrasound images be
 32 reviewed and explained to the patient; requiring that all
 33 other provisions in s. 390.0111, F.S., must be complied
 34 with should the patient decline to view her live
 35 ultrasound images; providing for severability; providing
 36 an effective date.

37

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

39

40 Section 1. Subsections (1) and (3) of section 390.0111,
 41 Florida Statutes, are amended to read:

42 390.0111 Termination of pregnancies.--

43 (1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.--

44 (a) No termination of pregnancy shall be performed on any
 45 human being in the third trimester of pregnancy unless:

46 1.(a) The abortion is performed in a hospital; and

47 2.a. Two physicians certify in writing to the fact that,
 48 to a reasonable degree of medical probability, the termination
 49 of pregnancy is necessary to save the life or preserve the
 50 health of the pregnant woman; or

51 b.(b) The physician certifies in writing to the medical
 52 necessity for legitimate emergency medical procedures for
 53 termination of pregnancy in the third trimester, and another
 54 physician is not available for consultation.

55 (b) Violation of this subsection by a physician
 56 constitutes grounds for disciplinary action under s. 458.331 or

57 s. 459.015.

58 (3) CONSENTS REQUIRED.--A termination of pregnancy may not
59 be performed or induced except with the voluntary and informed
60 written consent of the pregnant woman or, in the case of a
61 mental incompetent, the voluntary and informed written consent
62 of her court-appointed guardian.

63 (a) Except in the case of a medical emergency, consent to
64 a termination of pregnancy is voluntary and informed only if:

65 1. The physician who is to perform the procedure, or the
66 referring physician, has, at a minimum, orally, in person,
67 informed the woman of:

68 a. The nature and risks of undergoing or not undergoing
69 the proposed procedure that a reasonable patient would consider
70 material to making a knowing and willful decision of whether to
71 terminate a pregnancy.

72 b. The probable gestational age of the fetus, verified by
73 an ultrasound, at the time the termination of pregnancy is to be
74 performed.

75 (I) The ultrasound must be performed by the physician who
76 is to perform the abortion or by a person having documented
77 evidence that he or she has completed a course in the operation
78 of ultrasound equipment as prescribed by rule and who is working
79 in conjunction with the physician.

80 (II) The person performing the ultrasound must allow the
81 woman to view the live ultrasound images, and a physician or a
82 registered nurse, licensed practical nurse, advanced registered
83 nurse practitioner, or physician assistant working in
84 conjunction with the physician must contemporaneously review and

85 explain the live ultrasound images to the woman, prior to the
86 woman giving informed consent to having an abortion procedure
87 performed. However, this sub-sub-subparagraph does not apply if,
88 at the time the woman schedules or arrives for her appointment
89 to obtain an abortion, a copy of a restraining order, police
90 report, medical record, or other court order or documentation is
91 presented that evidences that the woman is obtaining the
92 abortion because the woman is a victim of rape, incest, domestic
93 violence, or human trafficking or that the woman has been
94 diagnosed with a condition that, on the basis of a physician's
95 good faith clinical judgment, would create a serious risk of
96 substantial and irreversible impairment of a major bodily
97 function if the woman delayed terminating her pregnancy.

98 (III) The woman has a right to decline to view the
99 ultrasound images after she is informed of her right and offered
100 an opportunity to view them. If the woman declines to view the
101 ultrasound images, the woman shall complete a form acknowledging
102 that she was offered an opportunity to view her ultrasound but
103 that she rejected that opportunity. The form must also indicate
104 that the woman's decision not to view the ultrasound was not
105 based on any undue influence from any third party to discourage
106 her from viewing the images and that she declined to view the
107 images of her own free will.

108 c. The medical risks to the woman and fetus of carrying
109 the pregnancy to term.

110 2. Printed materials prepared and provided by the
111 department have been provided to the pregnant woman, if she
112 chooses to view these materials, including:

113 a. A description of the fetus, including a description of
 114 the various stages of development.

115 b. A list of entities ~~agencies~~ that offer alternatives to
 116 terminating the pregnancy.

117 c. Detailed information on the availability of medical
 118 assistance benefits for prenatal care, childbirth, and neonatal
 119 care.

120 3. The woman acknowledges in writing, before the
 121 termination of pregnancy, that the information required to be
 122 provided under this subsection has been provided.

123
 124 Nothing in this paragraph is intended to prohibit a physician
 125 from providing any additional information which the physician
 126 deems material to the woman's informed decision to terminate her
 127 pregnancy.

128 (b) In the event a medical emergency exists and a
 129 physician cannot comply with the requirements for informed
 130 consent, a physician may terminate a pregnancy if he or she has
 131 obtained at least one corroborative medical opinion attesting to
 132 the medical necessity for emergency medical procedures and to
 133 the fact that to a reasonable degree of medical certainty the
 134 continuation of the pregnancy would threaten the life of the
 135 pregnant woman. In the event no second physician is available
 136 for a corroborating opinion, the physician may proceed but shall
 137 document reasons for the medical necessity in the patient's
 138 medical records.

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

141 s. 459.015. Substantial compliance or reasonable belief that
 142 complying with the requirements of informed consent would
 143 threaten the life or health of the patient is a defense to any
 144 action brought under this paragraph.

145 Section 2. Subsection (3), paragraphs (a), (c), and (e) of
 146 subsection (4), and subsection (6) of section 390.01114, Florida
 147 Statutes, are amended to read:

148 390.01114 Parental Notice of Abortion Act.--

149 (3) NOTIFICATION REQUIRED.--

150 (a) 1.a. Actual notice shall be provided by the physician
 151 performing or inducing the termination of pregnancy before the
 152 performance or inducement of the termination of the pregnancy of
 153 a minor. The notice may be given by a referring physician. The
 154 physician who performs or induces the termination of pregnancy
 155 must receive the written statement of the referring physician
 156 certifying that the referring physician has given notice. If
 157 actual notice is provided by telephone, the physician must
 158 actually speak with the parent or guardian and must record in
 159 the minor's medical file the name of the parent or guardian
 160 provided notice, the phone number dialed, and the date and time
 161 of the call.

162 b. If actual notice is not possible after a reasonable
 163 effort has been made, the physician performing or inducing the
 164 termination of pregnancy or the referring physician must give
 165 constructive notice. If constructive notice is given, the
 166 physician must document that notice by placing copies of any
 167 document related to the constructive notice, including, but not
 168 limited to, a copy of the letter and the return receipt, in the

169 minor's medical file.

170 2. Notice given under this subsection by the physician
171 performing or inducing the termination of pregnancy must include
172 the name and address of the facility providing the termination
173 of pregnancy and the name of the physician providing notice.
174 Notice given under this subsection by a referring physician must
175 include the name and address of the facility where he or she is
176 referring the minor and the name of the physician providing
177 notice. ~~If actual notice is provided by telephone, the physician~~
178 ~~must actually speak with the parent or guardian, and must record~~
179 ~~in the minor's medical file the name of the parent or guardian~~
180 ~~provided notice, the phone number dialed, and the date and time~~
181 ~~of the call. If constructive notice is given, the physician must~~
182 ~~document that notice by placing copies of any document related~~
183 ~~to the constructive notice, including, but not limited to, a~~
184 ~~copy of the letter and the return receipt, in the minor's~~
185 ~~medical file.~~

186 (b) Notice is not required if:

187 1. In the physician's good faith clinical judgment, a
188 medical emergency exists and there is insufficient time for the
189 attending physician to comply with the notification
190 requirements. If a medical emergency exists, the physician may
191 proceed but must document reasons for the medical necessity in
192 the patient's medical records;

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

195 3. Notice is waived by the minor who is or has been
196 married or has had the disability of nonage removed under s.
197 743.015 or a similar statute of another state;

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

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

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

204 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

205 (a) A minor may petition any circuit court in a judicial
206 circuit within the jurisdiction of the District Court of Appeal
207 in which she resides for a waiver of the notice requirements of
208 subsection (3) and may participate in proceedings on her own
209 behalf. The petition may be filed under a pseudonym or through
210 the use of initials, as provided by court rule. The petition
211 must include a statement that the petitioner is pregnant and
212 notice has not been waived. The court shall advise the minor
213 that she has a right to court-appointed counsel and shall
214 provide her with counsel upon her request at no cost to the
215 minor. The court shall appoint a guardian ad litem for the
216 minor.

217 (c) If the court finds, by clear and convincing evidence,
218 that the minor is sufficiently mature to decide whether to
219 terminate her pregnancy, the court shall issue an order
220 authorizing the minor to consent to the performance or
221 inducement of a termination of pregnancy without the
222 notification of a parent or guardian.

223 1. Factors a court shall consider when determining whether
224 a minor is sufficiently mature include, but are not limited to,
225 the following:

226 a. Whether the minor is mature enough to make her abortion
227 decision, as evidenced by:

228 (I) The minor's age.

229 (II) The minor's credibility and demeanor as a witness.

230 (III) The minor's emotional development; and

231 b. Whether the minor is well informed enough to make the
232 decision on her own, as evidenced by:

233 (I) The minor's ability to assess both the immediate and
234 long-range consequences of her choices.

235 (II) The minor's ability to understand and explain the
236 nature and risks of undergoing or not undergoing a procedure to
237 terminate her pregnancy and to apply that understanding to her
238 decision.

239 2. The court should also take into consideration whether
240 there has been any undue influence by another on the minor's
241 decision to have an abortion.

242

243 If the court does not make the finding specified in this
244 paragraph or paragraph (d), it must dismiss the petition.

245 (e) A court that conducts proceedings under this section
246 shall:

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

249 2. Issue a written final order containing all factual
250 findings and legal conclusions, including factual findings and

251 legal conclusions as to whether the petitioner is sufficiently
 252 mature based on the factors set forth in subparagraph(c)1.

253 3. Order that a confidential record be maintained as
 254 required under s. 390.01116. All hearings under this section,
 255 including appeals, shall remain confidential and closed to the
 256 public, as provided by court rule. A court that conducts
 257 ~~proceedings under this section shall provide for a written~~
 258 ~~transcript of all testimony and proceedings and issue written~~
 259 ~~and specific factual findings and legal conclusions supporting~~
 260 ~~its decision and shall order that a confidential record be~~
 261 ~~maintained, as required under s. 390.01116. At the hearing, the~~
 262 ~~court shall hear evidence relating to the emotional development,~~
 263 ~~maturity, intellect, and understanding of the minor, and all~~
 264 ~~other relevant evidence. All hearings under this section,~~
 265 ~~including appeals, shall remain confidential and closed to the~~
 266 ~~public, as provided by court rule.~~

267 (6) REPORT.--The Supreme Court, through the Office of the
 268 State Courts Administrator, shall report by February 1 of each
 269 year to the Governor, the President of the Senate, and the
 270 Speaker of the House of Representatives on the number of
 271 petitions filed under subsection (4) for the preceding year, and
 272 the timing and manner of disposal of such petitions by each
 273 circuit court. For each petition, the report shall also state
 274 the judicial circuit within which the minor resided; whether the
 275 petition was granted or denied based on the minor's maturity or
 276 the best interest of the minor, or both; whether the minor was
 277 represented by court-appointed or private counsel; and the age
 278 of the minor.

279 Section 3. Subsection (1) and paragraph (d) of subsection
 280 (3) of section 390.012, Florida Statutes, are amended to read:

281 390.012 Powers of agency; rules; disposal of fetal
 282 remains.--

283 (1) The agency may develop and enforce rules pursuant to
 284 ss. 390.011-390.018 ~~390.001-390.018~~ and part II of chapter 408
 285 for the health, care, and treatment of persons in abortion
 286 clinics and for the safe operation of such clinics.

287 (a) The rules shall be reasonably related to the
 288 preservation of maternal health of the clients.

289 (b) The rules shall be in accordance with s. 797.03 and
 290 may not impose an unconstitutional burden on a woman's freedom
 291 to decide whether to terminate her pregnancy.

292 (c) The rules shall prohibit the performance of abortions
 293 in the third trimester other than in a hospital.

294 (d)~~(e)~~ The rules shall provide for:

295 1. The performance of pregnancy termination procedures
 296 only by a licensed physician.

297 2. The making, protection, and preservation of patient
 298 records, which shall be treated as medical records under chapter
 299 458.

300 (3) For clinics that perform or claim to perform abortions
 301 after the first trimester of pregnancy, the agency shall adopt
 302 rules pursuant to ss. 120.536(1) and 120.54 to implement the
 303 provisions of this chapter, including the following:

304 (d) Rules relating to the medical screening and evaluation
 305 of each abortion clinic patient. At a minimum, these rules shall
 306 require:

307 1. A medical history including reported allergies to
308 medications, antiseptic solutions, or latex; past surgeries; and
309 an obstetric and gynecological history.

310 2. A physical examination, including a bimanual
311 examination estimating uterine size and palpation of the adnexa.

312 3. The appropriate laboratory tests, including:

313 a. ~~For an abortion in which an ultrasound examination is~~
314 ~~not performed before the abortion procedure,~~ Urine or blood
315 tests for pregnancy performed before the abortion procedure.

316 b. A test for anemia.

317 c. Rh typing, unless reliable written documentation of
318 blood type is available.

319 d. Other tests as indicated from the physical examination.

320 4. An ultrasound evaluation for all patients ~~who elect to~~
321 ~~have an abortion after the first trimester.~~ The rules shall
322 require that if a person who is not a physician performs an
323 ultrasound examination, that person shall have documented
324 evidence that he or she has completed a course in the operation
325 of ultrasound equipment as prescribed in rule. The physician,
326 registered nurse, licensed practical nurse, advanced registered
327 nurse practitioner, or physician assistant shall review and
328 explain, ~~at the request of the patient,~~ the live ultrasound
329 images evaluation results, including an estimate of the probable
330 gestational age of the fetus, with the patient before the
331 abortion procedure is performed, unless the patient declines
332 pursuant to s. 390.0111. If the patient declines to view the
333 live ultrasound images, the rules shall require that s. 390.0111
334 be complied with in all other respects.

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335 5. That the physician is responsible for estimating the
336 gestational age of the fetus based on the ultrasound examination
337 and obstetric standards in keeping with established standards of
338 care regarding the estimation of fetal age as defined in rule
339 and shall write the estimate in the patient's medical history.
340 The physician shall keep original prints of each ultrasound
341 examination of a patient in the patient's medical history file.

342 Section 4. If any provision of this act or the application
343 thereof to any person or circumstance is held invalid, the
344 invalidity does not affect other provisions or applications of
345 the act which can be given effect without the invalid provision
346 or application, and to this end the provisions of this act are
347 declared severable.

348 Section 5. This act shall take effect July 1, 2008.