

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Grall offered the following:

Substitute Amendment for Amendment (579795) (with title amendment)

Remove lines 29-291 and insert:

Section 2. Subsections (3), (4), (5), and (6) of section 390.01114, Florida Statutes, are renumbered as subsections (4), (6), (7), and (8), respectively, paragraph (b) of present subsection (3) and present subsections (4), (5), and (6) are amended, and new subsections (3) and (5) are added to that section, to read:

390.01114 Parental Notice of and Consent for Abortion Act.—

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14 (1) SHORT TITLE.—This section may be cited as the
15 "Parental Notice of and Consent for Abortion Act."

16 (3) TERMINATION OF THE PREGNANCY OF A MINOR.—A physician
17 may not perform or induce the termination of a pregnancy of a
18 minor unless the physician has complied with the notice and
19 consent requirements of this section.

20 (4) ~~(3)~~ NOTIFICATION REQUIRED.—

21 (b) Notice is not required if:

22 1. In the physician's good faith clinical judgment, a
23 medical emergency exists and there is insufficient time for the
24 attending physician to comply with the notification
25 requirements. If a medical emergency exists, the physician shall
26 make reasonable attempts, whenever possible, without endangering
27 the minor, to contact the parent or legal guardian, and may
28 proceed, but must document reasons for the medical necessity in
29 the patient's medical records. The physician shall provide
30 notice directly, in person or by telephone, to the parent or
31 legal guardian, including details of the medical emergency and
32 any additional risks to the minor. If the parent or legal
33 guardian has not been notified within 24 hours after the
34 termination of the pregnancy, the physician shall provide notice
35 in writing, including details of the medical emergency and any
36 additional risks to the minor, signed by the physician, to the
37 last known address of the parent or legal guardian of the minor,
38 by first-class mail and by certified mail, return receipt

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39 requested, with delivery restricted to the parent or legal
40 guardian;

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

46 3. Notice is waived by the minor who is or has been
47 married or has had the disability of nonage removed under s.
48 743.015 or a similar statute of another state;

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

51 5. Notice is waived under subsection (6) ~~(4)~~.

52 (5) PARENTAL CONSENT REQUIRED.-

53 (a) A physician must obtain written consent from a parent
54 or legal guardian before performing or inducing the termination
55 of a pregnancy of a minor.

56 1. The consenting parent or legal guardian shall provide
57 to the physician a copy of a government-issued proof of
58 identification and written documentation establishing that he or
59 she is the lawful parent or legal guardian of the minor. The
60 parent or legal guardian shall certify in a signed, dated,
61 notarized statement, initialed on each page, that he or she
62 consents to the termination of a pregnancy of the minor, and
63 must include the following: "I certify that I, (insert name of

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64 parent or legal guardian), am the parent or legal guardian of
65 (insert name of minor) and give consent for (insert name of
66 physician) to perform or induce a termination of pregnancy. I
67 understand that any person who knowingly makes a fraudulent
68 statement in this regard commits a felony."

69 2. The physician shall keep a copy of the proof of
70 identification of the parent or legal guardian and the certified
71 statement in the medical file of the minor for 5 years after the
72 minor reaches the age of 18 years, but in no event less than 7
73 years.

74 3. A physician receiving parental consent under this
75 section shall execute for inclusion in the medical record of the
76 minor an affidavit stating: "I, (insert name of physician),
77 certify that according to my best information and belief, a
78 reasonable person under similar circumstances would rely on the
79 information presented by both the minor and her parent or legal
80 guardian as sufficient evidence of identity."

81 (b) Parental consent is not required if:

82 1. Notification is not required under subparagraphs
83 (4) (b) 1. and 3.-5.;

84 2. Notification is not required under subparagraph
85 (4) (b) 2., and the waiver contains a specific waiver of a parent
86 or legal guardian to consent to the minor's termination of
87 pregnancy and the parent or legal guardian provides a copy of a
88 government-issued proof of identification and written

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89 documentation establishing that he or she is the lawful parent
90 or legal guardian of the minor;

91 3. Consent is waived under subsection (6); or

92 4. In the physician's good faith clinical judgment, a
93 medical emergency exists and there is insufficient time for the
94 attending physician to comply with the consent requirement. If a
95 medical emergency exists, the physician shall make reasonable
96 attempts, whenever possible, without endangering the minor, to
97 contact the parent or legal guardian of the minor, and may
98 proceed, but must document reasons for the medical necessity in
99 the patient's medical records. The physician shall inform the
100 parent or legal guardian, in person or by telephone, within 24
101 hours after the termination of the pregnancy of the minor,
102 including details of the medical emergency that necessitated the
103 termination of the pregnancy without the parent's or legal
104 guardian's consent. The physician shall also provide this
105 information in writing to the parent or legal guardian at his or
106 her last known address, by first-class mail or by certified
107 mail, return receipt requested, with delivery restricted to the
108 parent or legal guardian.

109 (c)1. A physician who intentionally or recklessly performs
110 or induces, or attempts to perform or induce, a termination of a
111 pregnancy of a minor without obtaining the required consent
112 pursuant to this subsection commits a felony of the third
113 degree, punishable as provided in s. 775.082, s. 775.083, or s.

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114 775.084. A penalty may not be assessed against the minor upon
115 whom a termination of pregnancy is performed or induced or upon
116 whom a termination of pregnancy is attempted to be performed or
117 induced.

118 2. It is a defense to prosecution that a minor
119 misrepresented her age or identity to a physician by displaying
120 a driver license or identification card issued by the state or
121 another state that indicated that the minor was over 18 years of
122 age and that the appearance of the minor was such that a
123 reasonably prudent person would believe that the minor was not
124 under the age of 18 years. The defense does not apply if the
125 physician is shown to have had independent knowledge of the
126 minor's actual age or identity or failed to use due diligence in
127 determining the minor's age or identity.

128 (6)(4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.-

129 (a) A minor may petition any circuit court in which the
130 minor resides for a waiver of the ~~notice~~ requirements of this
131 section subsection (3) and may participate in proceedings on her
132 own behalf. The petition may be filed under a pseudonym or
133 through the use of initials, as provided by court rule. The
134 petition must include a statement that the petitioner is
135 pregnant and the requirements of this section have ~~notice has~~
136 not been waived. The court shall advise the minor that she has a
137 right to court-appointed counsel ~~and shall provide her with~~
138 ~~counsel upon her request~~ at no cost to the minor. The court

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139 shall, upon request, provide counsel for the minor at least 24
140 hours before the court proceeding.

141 (b)1. Court proceedings under this section ~~subsection~~ must
142 be given precedence over other pending matters to the extent
143 necessary to ensure that the court reaches a decision promptly.
144 The court shall rule, and issue written findings of fact and
145 conclusions of law, within 3 business days after the petition is
146 filed, except that the 3-business-day limitation may be extended
147 at the request of the minor. If the court fails to rule within
148 the 3-business-day period and an extension has not been
149 requested, the minor may immediately petition for a hearing upon
150 the expiration of the 3-business-day period to the chief judge
151 of the circuit, who must ensure a hearing is held within 48
152 hours after receipt of the minor's petition and an order is
153 entered within 24 hours after the hearing.

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

163 (c) If the court finds, by clear and convincing evidence,

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164 that the minor is sufficiently mature to decide whether to
165 terminate her pregnancy, the court shall issue an order
166 authorizing the minor to consent to the performance or
167 inducement of a termination of the pregnancy ~~without the~~
168 ~~notification of a parent or guardian~~. If the court does not make
169 the finding specified in this paragraph or paragraph (d), it
170 must dismiss the petition. Factors the court shall consider
171 include:

172 1. The minor's:

173 a. Age.

174 b. Overall intelligence.

175 c. Emotional development and stability.

176 d. Credibility and demeanor as a witness.

177 e. Ability to accept responsibility.

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

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

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

185 (d) If the court finds, by a preponderance of the
186 evidence, that the petitioner is the victim of child abuse or
187 sexual abuse inflicted by one or both of her parents or her
188 guardian, or by clear and convincing evidence that the

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189 requirements of this section are ~~notification of a parent or~~
190 ~~guardian is~~ not in the best interest of the petitioner, the
191 court shall issue an order authorizing the minor to consent to
192 the performance or inducement of a termination of the pregnancy
193 ~~without the notification of a parent or guardian~~. The best-
194 interest standard does not include financial best interest or
195 financial considerations or the potential financial impact on
196 the minor or the minor's family if the minor does not terminate
197 the pregnancy. If the court finds evidence of child abuse or
198 sexual abuse of the minor petitioner by any person, the court
199 shall report the evidence of child abuse or sexual abuse of the
200 petitioner, as provided in s. 39.201. If the court does not make
201 the finding specified in this paragraph or paragraph (c), it
202 must dismiss the petition.

203 (e) A court that conducts proceedings under this section
204 shall:

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

207 2. Issue a final written order containing factual findings
208 and legal conclusions supporting its decision, including factual
209 findings and legal conclusions relating to the maturity of the
210 minor as provided under paragraph (c); and

211 3. Order that a confidential record be maintained, as
212 required under s. 390.01116.

213 (f) All hearings under this section, including appeals,

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214 shall remain confidential and closed to the public, as provided
215 by court rule.

216 (g) An expedited appeal shall be made available, as the
217 Supreme Court provides by rule, to any minor to whom the circuit
218 court denies a waiver of the requirements of this section
219 ~~notice~~. An order authorizing a termination of pregnancy under
220 this subsection ~~without notice~~ is not subject to appeal.

221 (h) Filing fees or court costs may not be required of any
222 pregnant minor who petitions a court for a waiver of the
223 requirements of this section ~~parental notification under this~~
224 ~~subsection~~ at either the trial or the appellate level.

225 (i) A county is not obligated to pay the salaries, costs,
226 or expenses of any counsel appointed by the court under this
227 subsection.

228 (7)~~(5)~~ PROCEEDINGS.—The Supreme Court is requested to
229 adopt rules and forms for petitions to ensure that proceedings
230 under subsection (6) ~~(4)~~ are handled expeditiously and in a
231 manner consistent with this act. The Supreme Court is also
232 requested to adopt rules to ensure that the hearings protect the
233 minor's confidentiality and the confidentiality of the
234 proceedings.

235 (8)~~(6)~~ REPORT.—The Supreme Court, through the Office of
236 the State Courts Administrator, shall report by February 1 of
237 each year to the Governor, the President of the Senate, and the
238 Speaker of the House of Representatives on the number of

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239 petitions filed under subsection (6) ~~(4)~~ for the preceding year,
240 and the timing and manner of disposal of such petitions by each
241 circuit court. For each petition resulting in a waiver of the
242 requirements of this section ~~notice~~, the reason for the waiver
243 shall be included in the report.

244 Section 3. Paragraph (a) of subsection (6) of section
245 27.511, Florida Statutes, is amended to read:

246 27.511 Offices of criminal conflict and civil regional
247 counsel; legislative intent; qualifications; appointment;
248 duties.—

249 (6) (a) The office of criminal conflict and civil regional
250 counsel has primary responsibility for representing persons
251 entitled to court-appointed counsel under the Federal or State
252 Constitution or as authorized by general law in civil
253 proceedings, including, but not limited to, proceedings under s.
254 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and
255 proceedings to terminate parental rights under chapter 63.
256 Private court-appointed counsel eligible under s. 27.40 have
257 primary responsibility for representing minors who request
258 counsel under s. 390.01114, the Parental Notice of and Consent
259 for Abortion Act; however, the office of criminal conflict and
260 civil regional counsel may represent a minor under that section
261 if the court finds that no private court-appointed attorney is
262 available.

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263 Section 4. If any provision of this act or its application
264 to any person or circumstance is held invalid, the invalidity
265 does not affect other provisions or applications of the act
266 which can be given effect without the invalid provision or
267 application, and to this end the provisions of this act are
268 severable.

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270 -----

271 **T I T L E A M E N D M E N T**

272 Remove lines 4-13 and insert:
273 violation; amending s. 390.01114, F.S.; revising a
274 short title; requiring a physician to obtain notarized
275 written consent of a minor's parent or legal guardian
276 before inducing or performing a termination of a
277 pregnancy on the minor; providing exceptions to such
278 consent requirement; providing criminal penalties;
279 revising provisions relating to the procedures for
280 judicial waiver to conform to changes made by the act;
281 amending s. 27.511, F.S.; conforming a provision to
282 changes made by the act; providing severability;

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