

1 A bill to be entitled
 2 An act relating to abortion; amending s. 390.0111,
 3 F.S.; reclassifying a criminal offense for a specified
 4 violation; amending s. 390.01114, F.S.; revising a
 5 short title; requiring a physician to obtain notarized
 6 written consent of a minor's parent or legal guardian
 7 before inducing or performing a termination of a
 8 pregnancy on the minor; providing exceptions to such
 9 consent requirement; providing criminal penalties;
 10 revising provisions relating to the procedures for
 11 judicial waiver to conform to changes made by the act;
 12 amending s. 27.511, F.S.; conforming a provision to
 13 changes made by the act; providing severability;
 14 providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (e) of subsection (12) of section
 19 390.0111, Florida Statutes, is amended to read:

20 390.0111 Termination of pregnancies.—

21 (12) INFANTS BORN ALIVE.—

22 (e) A person who violates this subsection commits a felony
 23 of the third ~~misdemeanor of the first~~ degree, punishable as
 24 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084. This
 25 subsection shall not be construed as a specific provision of law

26 relating to a particular subject matter that would preclude
 27 prosecution of a more general offense, regardless of the
 28 penalty.

29 Section 2. Subsections (3), (4), (5), and (6) of section
 30 390.01114, Florida Statutes, are renumbered as subsections (4),
 31 (6), (7), and (8), respectively, paragraph (b) of present
 32 subsection (3) and present subsections (4), (5), and (6) are
 33 amended, and new subsections (3) and (5) are added to that
 34 section, to read:

35 390.01114 Parental Notice of and Consent for Abortion
 36 Act.—

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

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

43 ~~(4)(3)~~ NOTIFICATION REQUIRED.—

44 (b) Notice is not required if:

45 1. In the physician's good faith clinical judgment, a
 46 medical emergency exists and there is insufficient time for the
 47 attending physician to comply with the notification
 48 requirements. If a medical emergency exists, the physician shall
 49 make reasonable attempts, whenever possible, without endangering
 50 the minor, to contact the parent or legal guardian, and may

51 proceed, but must document reasons for the medical necessity in
52 the patient's medical records. The physician shall provide
53 notice directly, in person or by telephone, to the parent or
54 legal guardian, including details of the medical emergency and
55 any additional risks to the minor. If the parent or legal
56 guardian has not been notified within 24 hours after the
57 termination of the pregnancy, the physician shall provide notice
58 in writing, including details of the medical emergency and any
59 additional risks to the minor, signed by the physician, to the
60 last known address of the parent or legal guardian of the minor,
61 by first-class mail and by certified mail, return receipt
62 requested, with delivery restricted to the parent or legal
63 guardian;

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

69 3. Notice is waived by the minor who is or has been
70 married or has had the disability of nonage removed under s.
71 743.015 or a similar statute of another state;

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

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

75 (5) PARENTAL CONSENT REQUIRED.—

76 (a) A physician must obtain written consent from a parent
77 or legal guardian before performing or inducing the termination
78 of a pregnancy of a minor.

79 1. The consenting parent or legal guardian shall provide
80 to the physician a copy of a government-issued proof of
81 identification and written documentation establishing that he or
82 she is the lawful parent or legal guardian of the minor. The
83 parent or legal guardian shall certify in a signed, dated,
84 notarized statement, initialed on each page, that he or she
85 consents to the termination of a pregnancy of the minor, and
86 must include the following: "I certify that I, (insert name of
87 parent or legal guardian), am the parent or legal guardian of
88 (insert name of minor) and give consent for (insert name of
89 physician) to perform or induce a termination of pregnancy. I
90 understand that any person who knowingly makes a fraudulent
91 statement in this regard commits a felony."

92 2. The physician shall keep a copy of the proof of
93 identification of the parent or legal guardian and the certified
94 statement in the medical file of the minor for 5 years after the
95 minor reaches the age of 18 years, but in no event less than 7
96 years.

97 3. A physician receiving parental consent under this
98 section shall execute for inclusion in the medical record of the
99 minor an affidavit stating: "I, (insert name of physician),
100 certify that according to my best information and belief, a

101 reasonable person under similar circumstances would rely on the
102 information presented by both the minor and her parent or legal
103 guardian as sufficient evidence of identity."

104 (b) Parental consent is not required if:

105 1. Notification is not required under subparagraphs

106 (4) (b) 1. and 3.-5.;

107 2. Notification is not required under subparagraph

108 (4) (b) 2., and the waiver contains a specific waiver of a parent

109 or legal guardian to consent to the minor's termination of

110 pregnancy and the parent or legal guardian provides a copy of a

111 government-issued proof of identification and written

112 documentation establishing that he or she is the lawful parent

113 or legal guardian of the minor;

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

115 4. In the physician's good faith clinical judgment, a

116 medical emergency exists and there is insufficient time for the

117 attending physician to comply with the consent requirement. If a

118 medical emergency exists, the physician shall make reasonable

119 attempts, whenever possible, without endangering the minor, to

120 contact the parent or legal guardian of the minor, and may

121 proceed, but must document reasons for the medical necessity in

122 the patient's medical records. The physician shall inform the

123 parent or legal guardian, in person or by telephone, within 24

124 hours after the termination of the pregnancy of the minor,

125 including details of the medical emergency that necessitated the

126 termination of the pregnancy without the parent's or legal
127 guardian's consent. The physician shall also provide this
128 information in writing to the parent or legal guardian at his or
129 her last known address, by first-class mail or by certified
130 mail, return receipt requested, with delivery restricted to the
131 parent or legal guardian.

132 (c)1. A physician who intentionally or recklessly performs
133 or induces, or attempts to perform or induce, a termination of a
134 pregnancy of a minor without obtaining the required consent
135 pursuant to this subsection commits a felony of the third
136 degree, punishable as provided in s. 775.082, s. 775.083, or s.
137 775.084. A penalty may not be assessed against the minor upon
138 whom a termination of pregnancy is performed or induced or upon
139 whom a termination of pregnancy is attempted to be performed or
140 induced.

141 2. It is a defense to prosecution that a minor
142 misrepresented her age or identity to a physician by displaying
143 a driver license or identification card issued by the state or
144 another state that indicated that the minor was over 18 years of
145 age and that the appearance of the minor was such that a
146 reasonably prudent person would believe that the minor was not
147 under the age of 18 years. The defense does not apply if the
148 physician is shown to have had independent knowledge of the
149 minor's actual age or identity or failed to use due diligence in
150 determining the minor's age or identity.

151 (6)~~(4)~~ PROCEDURE FOR JUDICIAL WAIVER ~~OF NOTICE~~.—

152 (a) A minor may petition any circuit court in which the
153 minor resides for a waiver of the ~~notice~~ requirements of this
154 section subsection (3) and may participate in proceedings on her
155 own behalf. The petition may be filed under a pseudonym or
156 through the use of initials, as provided by court rule. The
157 petition must include a statement that the petitioner is
158 pregnant and the requirements of this section have ~~notice has~~
159 not been waived. The court shall advise the minor that she has a
160 right to court-appointed counsel ~~and shall provide her with~~
161 ~~counsel upon her request~~ at no cost to the minor. The court
162 shall, upon request, provide counsel for the minor at least 24
163 hours before the court proceeding.

164 (b)1. Court proceedings under this section subsection must
165 be given precedence over other pending matters to the extent
166 necessary to ensure that the court reaches a decision promptly.
167 The court shall rule, and issue written findings of fact and
168 conclusions of law, within 3 business days after the petition is
169 filed, except that the 3-business-day limitation may be extended
170 at the request of the minor. If the court fails to rule within
171 the 3-business-day period and an extension has not been
172 requested, the minor may immediately petition for a hearing upon
173 the expiration of the 3-business-day period to the chief judge
174 of the circuit, who must ensure a hearing is held within 48
175 hours after receipt of the minor's petition and an order is

176 entered within 24 hours after the hearing.

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

186 (c) If the court finds, by clear and convincing evidence,
187 that the minor is sufficiently mature to decide whether to
188 terminate her pregnancy, the court shall issue an order
189 authorizing the minor to consent to the performance or
190 inducement of a termination of the pregnancy ~~without the~~
191 ~~notification of a parent or guardian~~. If the court does not make
192 the finding specified in this paragraph or paragraph (d), it
193 must dismiss the petition. Factors the court shall consider
194 include:

- 195 1. The minor's:
- 196 a. Age.
- 197 b. Overall intelligence.
- 198 c. Emotional development and stability.
- 199 d. Credibility and demeanor as a witness.
- 200 e. Ability to accept responsibility.

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

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

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

208 (d) If the court finds, by a preponderance of the
209 evidence, that the petitioner is the victim of child abuse or
210 sexual abuse inflicted by one or both of her parents or her
211 guardian, or by clear and convincing evidence that the
212 requirements of this section are ~~notification of a parent or~~
213 ~~guardian is~~ not in the best interest of the petitioner, the
214 court shall issue an order authorizing the minor to consent to
215 the performance or inducement of a termination of the pregnancy
216 ~~without the notification of a parent or guardian~~. The best-
217 interest standard does not include financial best interest or
218 financial considerations or the potential financial impact on
219 the minor or the minor's family if the minor does not terminate
220 the pregnancy. If the court finds evidence of child abuse or
221 sexual abuse of the minor petitioner by any person, the court
222 shall report the evidence of child abuse or sexual abuse of the
223 petitioner, as provided in s. 39.201. If the court does not make
224 the finding specified in this paragraph or paragraph (c), it
225 must dismiss the petition.

226 (e) A court that conducts proceedings under this section
 227 shall:

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

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

234 3. Order that a confidential record be maintained, as
 235 required under s. 390.01116.

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

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

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

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

251 (7) ~~(5)~~ PROCEEDINGS.—The Supreme Court is requested to
 252 adopt rules and forms for petitions to ensure that proceedings
 253 under subsection (6) ~~(4)~~ are handled expeditiously and in a
 254 manner consistent with this act. The Supreme Court is also
 255 requested to adopt rules to ensure that the hearings protect the
 256 minor's confidentiality and the confidentiality of the
 257 proceedings.

258 (8) ~~(6)~~ REPORT.—The Supreme Court, through the Office of
 259 the State Courts Administrator, shall report by February 1 of
 260 each year to the Governor, the President of the Senate, and the
 261 Speaker of the House of Representatives on the number of
 262 petitions filed under subsection (6) ~~(4)~~ for the preceding year,
 263 and the timing and manner of disposal of such petitions by each
 264 circuit court. For each petition resulting in a waiver of the
 265 requirements of this section ~~notice~~, the reason for the waiver
 266 shall be included in the report.

267 Section 3. Paragraph (a) of subsection (6) of section
 268 27.511, Florida Statutes, is amended to read:

269 27.511 Offices of criminal conflict and civil regional
 270 counsel; legislative intent; qualifications; appointment;
 271 duties.—

272 (6) (a) The office of criminal conflict and civil regional
 273 counsel has primary responsibility for representing persons
 274 entitled to court-appointed counsel under the Federal or State
 275 Constitution or as authorized by general law in civil

276 proceedings, including, but not limited to, proceedings under s.
277 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and
278 proceedings to terminate parental rights under chapter 63.
279 Private court-appointed counsel eligible under s. 27.40 have
280 primary responsibility for representing minors who request
281 counsel under s. 390.01114, the Parental Notice of and Consent
282 for Abortion Act; however, the office of criminal conflict and
283 civil regional counsel may represent a minor under that section
284 if the court finds that no private court-appointed attorney is
285 available.

286 Section 4. If any provision of this act or its application
287 to any person or circumstance is held invalid, the invalidity
288 does not affect other provisions or applications of the act
289 which can be given effect without the invalid provision or
290 application, and to this end the provisions of this act are
291 severable.

292 Section 5. This act shall take effect July 1, 2019.