HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 265 Abortion
SPONSOR(S): Grall and others
TIED BILLS: HB 267 **IDEN./SIM. BILLS:** CS/CS/SB 404

FINAL HOUSE FLOOR ACTION: 75 **Y's** 43 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 265 passed the House on February 20, 2020, as CS/CS/SB 404.

The Parental Notice of Abortion Act (Act) requires a physician to notify a parent or legal guardian of a minor prior to performing or inducing an abortion. The notification must occur 48 hours before the abortion if actual notice is provided or 72 hours for constructive notice. The Act provides exemptions from the notification requirement for medical emergencies, parental waiver, when the disability of nonage has been removed, when the minor is a parent and when the minor has been granted a judicial waiver. The Act requires the court to have a record of the judicial waiver hearing and to appoint counsel for the minor. The Act was challenged and upheld in Womancare of Orlando, Inc. v. Agwunobi, 448 F.Supp.2d 1293 (N.D.Fla. 2005).

The bill adds a parental consent requirement to the current parental notification statute. The bill prohibits, with limited exceptions, a physician from performing an abortion on a minor unless the physician receives notarized, written parental consent or an order from a court waiving the parental consent requirement.

The bill exempts a minor from the parental consent requirement if the minor is exempt from the parental notification requirement. This includes exemptions for when the disability of nonage has been removed, medical emergencies, parental waiver and when the minor is a parent. The bill also provides an exemption for medical emergencies for circumstances where the minor has notified her parent or legal guardian but has not obtained parental consent.

The bill expands the Act's current judicial waiver provision for parental notification to include waiver of parental consent. The bill adds a requirement that the court must appoint counsel for the minor at least 24 hours prior to the judicial waiver hearing and that all hearings, subject to the judge's availablility, be held in chambers or similarly private and informal setting within the courthouse.

Current law requires any health care practitioner present when an infant is born alive during an attempted abortion to preserve the health and life of the infant with care appropriate for the gestational age of the infant. The infant must also be immediately transported and admitted to a hospital. A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a violation of these requirements must report the violation to the Department of Health. The bill increases the penalty for violating these requirements from a first degree misdemeanor to a third degree felony.

The bill includes a severability clause.

The bill may have an insignificant, negative fiscal impact on the Department of Health and the Agency for Health Care Administration, which current resources are adequate to absorb.

The bill has no fiscal impact on local governments.

The bill was approved by the Governor on June 30, 2020, ch. 2020-148, L.O.F., the effective date is July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Federal Law on Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*[1], was decided by the U.S. Supreme Court. Using strict scrutiny, the Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[2] In 1992, the fundamental holding of *Roe* was upheld by the U.S. Supreme Court in *Planned Parenthood v. Casey*.[3]

Undue Burden

In *Planned Parenthood v. Casey*, the U.S. Supreme Court (Supreme Court) established the undue burden standard for determining whether a law places an impermissible obstacle to a woman's right to an abortion. The Court held that health regulations which impose undue burdens on the right to abortion are invalid.[4] State regulation imposes an "undue burden" on a woman's decision to have an abortion if it has the purpose or effect of placing a substantial obstacle in the path of the woman who seeks the abortion of a nonviable fetus.[5] However, the court opined, not every law which makes the right to an abortion more difficult to exercise is an infringement of that right.[6]

Parental Notification and Consent

The Supreme Court has consistently recognized the important role parents have in counseling their minor children considering abortion. In review of a parental consent statute the Supreme Court said: [7]

> There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.

The Supreme Court further explained:

> The tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding.

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[1] *Roe v. Wade*, 410 U.S. 113 (1973).
[2] Id.
[3] *Casey*, 505 U.S. 833 (1992).
[4] Id. at 878.
[5] Id. at 877
[6] Id. at 873.
[7] *Bellotti v. Baird*, 443 U.S. 622, 640-41 (1979) (Quoting Justice Stewart concurring in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 at 91(1976)).

To this end the Supreme Court has held that states can impose more restrictions on the right of minors to obtain abortions than they can impose on the rights of adults based upon: [8]

- The peculiar vulnerability of children;
- Children's inability to make critical decisions in an informed, mature manner; and
- The importance of the parental role in child rearing.

Parental rights in this area are not unfettered. The Supreme Court has held that parents may not exercise "an absolute, and possibly arbitrary, veto" over a minor's decision to terminate her pregnancy.[9] Parental consent statutes must contain a judicial bypass procedure to prevent a parent or legal guardian from having an absolute veto power over a minor's abortion decision.[10] In *Bellotti v. Baird*, the Supreme Court struck down a statute requiring a minor to obtain the consent of both parents before having an abortion, subject to a judicial bypass provision, because the statute's judicial bypass provision was too restrictive.[11] The Supreme Court explained that in order to be constitutional, a parental consent statute must contain a bypass provision that:[12]

- Allows the minor to bypass the consent requirement if she establishes that she is mature enough and well enough informed to make the abortion decision independently;
- Allows the minor to bypass the consent requirement if she establishes that the abortion would be in her best interests;
- Ensures the minor's anonymity; and
- Provides for expeditious bypass procedures.

Since the *Bellotti* opinion, the Supreme Court has reviewed parental notification statutes on four occasions.[13] In its review of parental notification statutes, the Supreme Court has specifically declined to
decide whether the judicial bypass procedures of parental consent statutes must be present in parental notification statutes.[14] Instead the Supreme Court has upheld such statutes reasoning that a parental notification statute that includes a judicial bypass provision sufficient to satisfy a parental consent statute, must necessarily be sufficient for a parental notification statute since mere notification does not afford anyone a veto power over a minor's abortion decision.[15]

Florida Abortion Law

Right to Abortion

The Florida Constitution, as interpreted by Florida courts, affords greater privacy rights than those provided by the U.S. Constitution. While the federal Constitution traditionally shields enumerated and implied individual liberties from state or federal intrusion, the U.S. Supreme Court has noted that state constitutions may provide greater protections.[16] Unlike the U.S. Constitution, Article I, s. 23 of the Florida Constitution contains an express right to privacy:

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise

[8] *Bellotti v. Baird*, 443 U.S. 622, 634 (1979).
[9] *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74-75 (1976).
[10] *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 510-511 (1990);
[11] *Bellotti v. Baird*, 443 U.S. 622 (1979).
[12] Id. at 643-44.
[13] *H.L. v. Matheson*, 450 U.S. 398, 407 (1981); *Lambert v. Wicklund*, 520 U.S. 292 (1997); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990); and *Hodgson v. Minnesota*, 497 U.S. 417 (1990).
[14] *Akron*, *supra* at 510; *Wicklund*, *supra* at 295.
[15] Id.
[16] *Pruneyard Shopping Center v. Robins*, 100 S.Ct. 2035, 2040 (1980), cited in *In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989).

> provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Florida Supreme Court opined in *In re T.W.* that this section provides greater privacy rights than those implied by the U.S. Constitution.[17]

The Florida Supreme Court has recognized Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[18] In *In re T.W.,* the Florida Supreme Court ruled that:[19]

> [P]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests….Under our Florida Constitution, the state's interest becomes compelling upon viability….Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate abortion in the interest of the unborn child if the mother's health is not in jeopardy.[20]

Parental Consent

In 1988, the Legislature passed a parental consent statute which established the requirements for a minor to obtain an abortion.[21] The law prohibited an unmarried woman under the age of 18 from obtaining an abortion unless she had parental consent or judicial waiver of the consent requirement.[22] The statute did not provide any exemptions from this requirement apart from judicial waiver.

A court could grant a waiver based upon a showing:[23]

- That the minor is sufficiently mature to give informed consent;
- That it is in the minor's best interest, even if the minor isn't sufficiently mature to give informed consent.
- That a parent unreasonably withheld consent;
- The minor's fear of physical or emotional abuse if her parent were requested to consent; or
- Any good cause shown.

A court was required to enter its order within 48 hours of the minor filing her petition and could enter its order ex parte.[24] A record of the judicial waiver hearing was not required nor was a court required to appoint counsel to an indigent minor.

In 1989, the parental consent statute was held unconstitutional by the Florida Supreme Court.[25] The state must prove the statute furthers a compelling state interest through the least intrusive means when privacy rights are at issue.[26] The Florida Supreme Court found that a compelling state interest was not

[17] Id. at 1191-1192.
[18] Id. at 1192.
[19] Id. at 1193.
[20] Id. at 1194.
[21] Section 390.001(4), F.S. (1988).
[22] Id.
[23] Id.
[24] Id.
[25] *In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989).
[26] Id. citing (*Winfield v. Division of Pari-Mutual Wagering*, 477 So.2d 544 (Fla. 1985)).

present because parental consent is not required when a minor seeks medical treatment related to her pregnancy or for her child and when a minor places her child up for adoption.[27]

The Florida Supreme Court also found that the 1989 parental consent statute was not the least intrusive means to accomplish the state's interest based upon deficiencies in the judicial waiver provision and failure to provide an exception for medical emergencies. The judicial waiver provision did not require the court to appoint counsel for indigent minors. The Florida Supreme Court found that appointment of counsel was required in matters where a minor's fundamental privacy right can be deprived.[28] The provision also did not require a record of the judicial waiver hearing. The Florida Supreme Court found that without a record appellate review is meaningless, stating "Without a record, the appellate court will be unable to determine whether the denial was lawful or was simply based on the trial judge's moral, religious, or political beliefs".[29]

Parental Notice

In 1999, the Legislature passed the Parental Notice of Abortion Act (act). The act required a physician performing or inducing an abortion on a minor to provide the minor's parent or legal guardian at least 48 hours notice.[30] The act provided for limited exceptions, the most substantial of which were in the case of a medical emergency and when the notice requirement was waived by a judge.[31] The act was enjoined before it was ever enforced and was subsequently held unconstitutional by the Florida Supreme Court.[32] The Florida Supreme Court relied exclusively on the express right to privacy provision found in the Florida Constitution to invalidate the act.[33]

In 2004, Florida voters approved an amendment to the Florida Constitution to authorize the Legislature to create a parental notification statute notwithstanding the express right to privacy constitutional provision. Article X, Section 22, FL. Const. provides:

> Parental notice of termination of a minor's pregnancy.--The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

In 2005, the Legislature passed a revised version of the parental notification statute to implement the new constitutional amendment. The 2005 Parental Notification Act (Act) was challenged and upheld based in part on the fact that it satisfied the *Belotti* requirements. [34]

The Act requires, with limited exceptions, a physician to notify the parent or legal guardian before performing an abortion on a minor.[35] The notification must occur 48 hours before the abortion if actual

[27] *In Re T.W.*, 551 So.2d 1186 (Fla. 1989).
[28] Id.
[29] Id.
[30] Section 390.01115(3)(a), F.S. (1999).
[31] Section 390.01115(3)(b), F.S. (1999).
[32] *North Florida Women's Health and Counseling Services v. State*, 866 So.2d 612 (Fla. 2003).
[33] Id. at 640.
[34] *Womancare of Orlando, Inc. v. Agwunobi*, 448 F.Supp.2d 1293 (N.D.Fla. 2005).
[35] Section 390.01114(3), F.S. The Act was amended in 2011 adding various requirements related to notice, medical emergencies and judicial waiver of parental consent (2011-227, L.O.F.).

notice[36] is provided or 72 hours if constructive notice[37] is provided. If actual notice is provided by telephone, it must be followed up with written confirmation by the physician and mailed to the last known address of the parent or legal guardian. Parental notification is not required in limited circumstances:[38]

- **Medical Emergency** - 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 requirement.[39]
- **Parental Waiver** - The waiver must be notarized, contain a specific waiver of the right of the parent or legal guardian to notice of the minor's termination of pregnancy and be dated no more than 30 days before the abortion;
- **Disability of Nonage Removed -** The minor is or has been married or has had the disability of nonage removed;
- **Minor is a Parent** - The minor has a minor dependent child; or
- **Judicial Waiver** - The minor has successfully petitioned a circuit court for a waiver of the notice requirement.

Minors may petition the court for judicial waiver of the parental notice requirements under the Act. A court is required to notify the minor that she has a right to court-appointed counsel upon request and at no cost.[40] A court has 3 business days to issue a ruling on a judicial waiver petition.[41] If a court does not rule within 3 business days, the minor may immediately petition the chief judge of the circuit who must ensure that a hearing is held within 48 hours of receipt of the minor's petition to the chief judge.[42] The chief judge then must also ensure that an order is entered within 24 hours of the hearing.[43]

[36] Actual notice is 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. Section 390.01114(2)(a), F.S.

[37] Constructive notice is 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. Section 390.01114(2)(c), F.S.

[38] Section 390.01114(3)(b), F.S.

[39] In medical emergencies, a physician may proceed with the abortion but must make reasonable attempts, without endangering the minor, to contact the parent or legal guardian and document reasons for the medical necessity in the patient's medical records. If the parent or legal guardian has not been notified within 24 hours after the abortion, the physician must provide notice in writing, including details of the medical emergency and any additional risks to the minor, to the last known address of the parent or legal guardian of the minor. Section 390.01114(3)(b), F.S.

[40] Section 390.01114(4)(a), F.S.

[41] Section 390.01114(4)(b), F.S.

[42] Id.

[43] Id.

A court may grant a waiver of parental notice requirements if the court finds:[44]

- By clear and convincing evidence,[45] that the minor is sufficiently mature to decide whether to terminate her pregnancy;
- By clear and convincing evidence, that the notification of a parent or guardian is not in the best interest of the petitioner; or
- By a preponderance of the evidence,[46] that there is evidence of child abuse or sexual abuse of the petitioner by one or both of her parents or her guardian.

A court must consider several factors in determining whether to grant a petition based upon the maturity of a minor including the minor's:[47]

- Age;
- Overall intelligence;
- Emotional development and stability;
- Credibility and demeanor as a witness;
- Ability to accept responsibility;
- Ability to assess both the immediate and long-range consequences of the minor's choices; and
- Ability to understand and explain the medical risks of the abortion and to apply that understanding to her decision.

Additionally, a court must determine whether there may be any undue influence by another on the minor's decision to have an abortion.[48]

The Act requires a court that conducts a judicial waiver proceeding to:[49]

- Provide for a written transcript of all testimony and proceedings; and
- Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor.

Minors have the right to an expedited appeal of a denial of a petition for a judicial waiver under the Act. An appellate court must rule within 7 days after receipt of the appeal.[50] An appeal that is remanded back to the circuit court must be ruled upon by the circuit court within 3 business days.[51]

The Act also requires the Supreme Court, through the Office of the State Courts Administrator, to report annually to the Governor, the Senate and the House of Representatives on the number of petitions filed, the manner of their disposal and the reason for any such petition that was granted.[52] In 2017,

[44] Section 390.01114(4)(d), F.S.
[45] Clear and convincing evidence is an intermediate level of proof, higher than a preponderance of the evidence but less than beyond a reasonable doubt, requiring that the evidence is credible; the memories of the witnesses are clear and without confusion; and the sum total of the evidence is of sufficient weight to convince the trier of fact without hesitancy. *In re Hawkins*, 151 So.3d 1200 (Fla. 2014).
[46] A preponderance of the evidence means the greater weight of the evidence or evidence that more likely than not tends to prove a certain proposition. *Gross v. Lyons*, 763 So.2d 276, 280m ftnt 1, (Fla. 2000).
[47] Section 390.01114(4)(c), F.S.
[48] Id.
[49] Section 390.01114(4)(e), F.S.
[50] Id.
[51] Id.
[52] Section 390.01114(6), F.S.

minors filed 224 petitions for waiver of which 205 were granted[53] and in 2018, minors filed 193 petitions of which 182 were granted.[54]

Abortion Regulation

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[55] An abortion must be performed by a physician[56] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing allopathic or osteopathic medicine in the employment of the United States.[57]

All abortion clinics and physicians performing abortions are subject to the following requirements:

- An abortion may only be performed in a validly licensed hospital, abortion clinic, or in a physician's office;[58]
- An abortion clinic must be operated by a person with a valid and current license;[59]
- A third trimester abortion may only be performed in a hospital;[60]
- Proper medical care must be given and used for a fetus when an abortion is performed during viability;[61]
- Experimentation on a fetus is prohibited;[62]
- Except when there is a medical emergency, an abortion may only be performed after a patient has given voluntary and written informed consent;[63]
- Consent includes verification of the fetal age via ultrasound imaging;[64]
- Fetal remains are to be disposed of in a sanitary and appropriate manner;[65] and
- Partial-birth abortions are prohibited.

The Department of Health and the Agency for Health Care Administration have authority to take licensure action against practitioners and clinics, respectively, which violate licensure statutes or rules.[66] Additionally, any person who willfully performs, or actively participates in, an abortion in violation of these requirements commits a third degree felony and commits a second degree felony if the woman dies.[67]

Infants Born Alive

In 2013, the Legislature established protections for infants born alive due to a failed abortion. [68] Section 390.0111, F.S., provides that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers and privileges as any other child born in the course of a natural

[53] Office of the State Courts Administrator, *Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December 2017* (January 2018).
[54] Office of the State Courts Administrator, Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December 2018 (January 2019).
[55] Section 390.011(1), F.S.
[56] Section 390.0111(2), F.S.
[57] Section 390.011(8), F.S.
[58] Section 797.03 (1), F.S.
[59] Section 797.03 (2), F.S.
[60] Section 797.03(3), F.S. The violation of any of these provisions results in a second degree misdemeanor.
[61] Section 390.0111(4), F.S.
[62] Section 390.0111(6), F.S.
[63] Section 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.
[64] Section 390.0111(3)(a)1.b., F.S.
[65] Section 390.0111(8), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor.
[66] Section 390.018, F.S.
[67] Section 390.0111(10), F.S.
[68] "Born alive" means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, Cesarean section, induced abortion, or other method. S. 390.011(4), F.S.

birth. The law requires that any health care practitioner present must humanely exercise the same degree of professional skill, care and diligence to preserve the health and life of the infant with care appropriate for the gestational age of the infant. In addition, the infant must be immediately transported and admitted to a hospital. It is a first degree misdemeanor offense[69] for violation of any of these requirements.

Criminal Punishment Code

Felony offenses subject to the Criminal Punishment Code[70] are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.[71] If an offense is unlisted on the offense severity ranking chart, the Criminal Punishment Code provides a ranking based on felony level.[72] For example, an unranked third degree felony is a level one.[73]

A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.[74] A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers.[75] The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.[76]

If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula.[77] If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control.[78]

Effect of Proposed Changes

Parental Consent

HB 265 adds a parental consent requirement to the current parental notification statute. The bill prohibits a physician from performing or inducing an abortion unless the physician has complied with the Act's parental notice and consent requirements.

The bill prohibits, with limited exceptions, a physician from performing an abortion on a minor unless the physician receives parental consent or an order from a court waiving the parental consent requirement. A parental consent must be notarized by the parent or legal guardian who must provide documentation to the physician that he or she is the parent or legal guardian of the minor seeking the abortion. The physician must execute an affidavit that the minor and the parent or legal guardian presented evidence that a reasonable person would believe as sufficient to prove identity. This affidavit must be placed in the minor's medical records.

The bill exempts minors from the parental consent requirement if the minor is exempt from the parental notification requirement. This includes exemptions for when the disability of nonage has been removed,

[69] A first degree misdemeanor is punishable by confinement in a county jail for up to one year, a fine of up to $1000, or both. Sections 775.082 and 775.083, F.S.
[70] All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. Section 921.002, F.S.
[71] Section 921.0022, F.S.
[72] Section 921.0023, F.S.
[73] Id.
[74] Sections 921.0022 and 921.0024, F.S.
[75] Section 921.0024(2), F.S.
[76] Id.
[77] Id.
[78] Id.

medical emergencies, parental waiver and when the minor is a parent. However, if the basis for the exemption from parental notification is the written waiver of the parent or legal guardian, the waiver must also expressly state that the parent or guardian waives his or her right to consent to an abortion of the minor. The 1989 parental consent statute did not include exemptions for medical emergencies and for when the minor was a parent. The Florida Supreme Court in *In Re T.W.* cited the lack of a medical emergency provision as one of the deficiencies in the 1989 parental consent statute.

The bill also provides an exemption for medical emergencies if 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 consent requirement. The bill requires the physician to notify the parent or legal guardian, in person or by telephone, within 24 hours of performing the abortion, including the detail of the medical emergency. The physician must also provide this notification to the parent or legal guardian by first-class mail or by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian. This medical emergency exemption is for circumstances where the minor has notified her parent or guardian but has not obtained consent.

The bill expands the current judicial waiver procedure for notification to include waiver of parental consent. Under current law a court is required to notify the minor that she has a right to court-appointed counsel upon request and at no cost. The bill adds an additional requirement that the court must appoint counsel for the minor at least 24 hours prior to the judicial waiver hearing. The Florida Supreme Court in *In Re T.W.* cited the failure to require appointment of counsel to the minor as one of the fatal deficiencies of the 1989 parental consent statute.

The bill maintains the requirement in current law that a court must consider several factors in determining whether to grant a petition based upon the maturity of a minor including the minor's:[79]

- Age;
- Overall intelligence;
- Emotional development and stability;
- Credibility and demeanor as a witness;
- Ability to accept responsibility;
- Ability to assess both the immediate and long-range consequences of the minor's choices; and
- Ability to understand and explain the medical risks of the abortion and to apply that understanding to her decision.

The bill also maintains the requirement in current law that a court that conduct a judicial waiver of parental consent proceeding to:

- Provide for a written transcript of all testimony and proceedings; and
- Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor.

The Florida Supreme Court in *In Re T.W.* cited the failure to require the court to create a record of the waiver hearing as one of the fatal deficiencies of the 1989 parental consent statute.

The bill adds a new requirement that all hearings held under this section be held in chambers or in a similarly private and informal setting within the courthouse, subject to the judge's availability.

<u>Infants Born Alive</u>

[79] Section 390.01114(4)(c), F.S.

The bill also increase the penalty for violating the requirements of the infants born alive provisions of s. 390.0111, F.S., from a first degree misdemeanor to a third degree felony, punishable by up to five years in prison and a $5,000 fine. The bill does not rank the offense on the Criminal Punishment Code Offense Severity Ranking Chart; therefore, it is ranked a level one as an unranked third degree felony.

This aligns the penalties for the violation of the Infants Born Alive provision with the general penalties for the violation of any of the requirements of s. 390.0111, F.S.

The bill includes a severability clause.

The bill provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant, negative fiscal impact on the Department of Health and the Agency for Health Care Administration for the enforcement of the bill's provisions, which current resources are adequate to absorb. The bill may have an insignificant positive impact on the number of prison beds by creating a new felony offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant positive impact on the number of jail beds by creating a new criminal offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.