

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Eskamani offered the following:

2
3 **Substitute Amendment for Amendment (805415) (with title**
4 **amendment)**

5 Between lines 306 and 307, insert:

6 Section 5. Section 390.011151, Florida Statutes, is
7 created to read:

8 390.011151 Parental notice of and consent for pregnancy of
9 a minor.-

10 (1) NOTIFICATION REQUIRED.-

11 (a) Actual notice shall be provided by any physician who
12 provides medical care to a minor who is pregnant. The notice may
13 be given by a referring physician. The physician who provides

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14 medical care to a pregnant minor must receive the written
15 statement of the referring physician certifying that the
16 referring physician has given notice. If actual notice is not
17 possible after a reasonable effort has been made, the physician
18 providing medical care for the pregnant minor or the referring
19 physician must give constructive notice. Notice given under this
20 subsection by the physician providing care for the pregnant
21 minor must include the name and address of the facility
22 providing such medical care and the name of the physician
23 providing notice. Notice given under this subsection by a
24 referring physician must include the name and address of the
25 facility where he or she is referring the minor and the name of
26 the physician providing notice. If actual notice is provided by
27 telephone, the physician must actually speak with the parent or
28 guardian, and must record in the minor's medical file the name
29 of the parent or guardian provided notice, the phone number
30 dialed, and the date and time of the call. If constructive
31 notice is given, the physician must document that notice by
32 placing copies of any document related to the constructive
33 notice, including, but not limited to, a copy of the letter and
34 the return receipt, in the minor's medical file. Actual notice
35 given by telephone shall be confirmed in writing, signed by the
36 physician, and mailed to the last known address of the parent or
37 legal guardian of the minor, by first-class mail and by

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38 certified mail, return receipt requested, with delivery
39 restricted to the parent or legal guardian.

40 (b) Notice is not required if:

41 1. 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 medical care for the pregnant minor, and
44 contains a specific waiver of the right of the parent or legal
45 guardian to notice of the pregnant minor's medical care;

46 2. 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 3. Notice is waived by the patient because the patient has
50 a minor child dependent on her; or

51 4. Notice is waived under subsection (3).

52 (c) Violation of this subsection by a physician
53 constitutes grounds for disciplinary action under s. 458.331 or
54 s. 459.015.

55 (2) PARENTAL CONSENT REQUIRED.—

56 (a) A physician must obtain written consent from a parent
57 or legal guardian before providing medical care to a pregnant
58 minor.

59 1. The consenting parent or legal guardian shall provide
60 to the physician a copy of a government-issued proof of
61 identification. The parent or legal guardian shall certify in a
62 signed, dated, and notarized document, initialed on each page,

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63 that he or she consents to the medical care of the pregnant
64 minor. The document must include the following statement, which
65 must precede the signature of the parent or guardian: "I,
66 (insert name of parent or legal guardian), am the (select
67 "parent" or "legal guardian," as appropriate) of (insert name of
68 minor) and give consent for (insert name of physician) to
69 provide medical care for her. Under penalties of perjury, I
70 declare that I have read the foregoing statement and that the
71 facts stated in it are true." A copy of the parent's or legal
72 guardian's government-issued proof of identification must be
73 attached to the notarized document.

74 2. The physician shall keep a copy of the proof of
75 identification of the parent or legal guardian and the certified
76 statement in the medical file of the minor for 5 years after the
77 minor reaches the age of 18 years, but in no event less than 7
78 years.

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

86 (b) The consent of a parent or guardian is not required
87 if:

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88 1. Notification is not required as provided in
89 subparagraph (1)(b)1., subparagraph (1)(b)3., subparagraph
90 (1)(b)4., or subparagraph (1)(b)5.;

91 2. Notification is not required due to the existence of a
92 waiver as provided in subparagraph (1)(b)2., if that waiver is
93 signed by the minor's parent or legal guardian, is notarized, is
94 dated within 30 days before medical care is provided to the
95 pregnant minor, contains a specific waiver of the right of the
96 parent or legal guardian to consent to the pregnant minor's
97 medical care, and a copy of the parent's or legal guardian's
98 government-issued proof of identification is attached to the
99 waiver;

100 3. Consent is waived under subsection (3); or

101 4. In the physician's good faith clinical judgment, a
102 medical emergency exists and there is insufficient time for the
103 attending physician to comply with the consent requirement. If a
104 medical emergency exists, the physician must make reasonable
105 attempts, whenever possible, and without endangering the minor,
106 to contact the parent or legal guardian of the minor, and may
107 proceed, but must document reasons for the medical necessity in
108 the minor patient's medical records. The physician shall inform
109 the parent or legal guardian, in person or by telephone, within
110 24 hours after providing medical care to the pregnant minor,
111 including details of the medical emergency that necessitated
112 such medical care without the parent's or legal guardian's

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113 consent. The physician shall also provide this information in
114 writing to the parent or legal guardian at his or her last known
115 address, by first-class mail or by certified mail, return
116 receipt requested, with delivery restricted to the parent or
117 legal guardian.

118 (c)1. A physician who intentionally or recklessly provides
119 medical care to a pregnant minor without obtaining the required
120 consent pursuant to this subsection commits a felony of the
121 third degree, punishable as provided in s. 775.082, s. 775.083,
122 or s. 775.084. A penalty may not be assessed against the minor
123 upon whom such medical care is provided.

124 2. It is a defense to prosecution that a minor
125 misrepresented her age or identity to a physician by displaying
126 a driver license or identification card issued by the state or
127 another state which indicated that the minor was 18 years of age
128 or older and that the appearance of the minor was such that a
129 reasonably prudent person would believe that the minor was not
130 under 18 years of age. To use the defense, a physician must
131 provide a copy of the driver license or identification card used
132 by the minor. The defense does not apply if the physician is
133 shown to have had independent knowledge of the minor's actual
134 age or identity or to have failed to use due diligence in
135 determining the minor's age or identity.

136 (3) PROCEDURE FOR JUDICIAL WAIVER.-

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137 (a) A minor may petition any circuit court in which the
138 minor resides for a waiver of the requirements of this section
139 and may participate in proceedings on her own behalf. The
140 petition may be filed under a pseudonym or through the use of
141 initials, as provided by court rule. The petition must include a
142 statement that the petitioner is pregnant and that the
143 requirements of this section have not been waived. The court
144 shall advise the minor that she has a right to court-appointed
145 counsel at no cost to the minor. The court shall, upon request,
146 provide counsel for the minor at least 24 hours before the court
147 proceeding.

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

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

170 (c) If the court finds, by clear and convincing evidence,
171 that the minor is sufficiently mature to decide whether to
172 continue with her pregnancy, the court shall issue an order
173 authorizing the minor to consent to the medical care provided
174 for her pregnancy. If the court does not make the finding
175 specified in this paragraph or paragraph (d), it must dismiss
176 the petition. Factors the court shall consider include:

177 1. The minor's:

178 a. Age.

179 b. Overall intelligence.

180 c. Emotional development and stability.

181 d. Credibility and demeanor as a witness.

182 e. Ability to accept responsibility.

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

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185 g. Ability to understand and explain the medical risks of
186 continuing her pregnancy and to apply that understanding to her
187 decision.

188 2. Whether there may be any undue influence by another on
189 the minor's decision to have continue with her pregnancy.

190 (d) If the court finds, by a preponderance of the
191 evidence, that the petitioner is the victim of child abuse or
192 sexual abuse inflicted by one or both of her parents or her
193 guardian, or by clear and convincing evidence that the
194 requirements of this section are not in the best interest of the
195 petitioner, the court shall issue an order authorizing the minor
196 to consent to the provision of medical care for her pregnancy.
197 The best-interest standard does not include financial best
198 interest or financial considerations or the potential financial
199 impact on the minor or the minor's family if the minor continues
200 her pregnancy. If the court finds evidence of child abuse or
201 sexual abuse of the minor petitioner by any person, the court
202 shall report the evidence of child abuse or sexual abuse of the
203 petitioner, as provided in s. 39.201. If the court does not make
204 the finding specified in this paragraph or paragraph (c), it
205 must dismiss the petition.

206 (e) A court that conducts proceedings under this section
207 shall:

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

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

214 3. Order that a confidential record be maintained, as
215 required under s. 390.01116.

216 (f) All hearings under this section, including appeals,
217 shall remain confidential and closed to the public, as provided
218 by court rule. Subject to a judge's availability as required
219 under s. 26.20, hearings held under this section must be held in
220 chambers or in a similarly private and informal setting within
221 the courthouse.

222 (g) An expedited appeal shall be made available, as the
223 Supreme Court provides by rule, to any minor to whom the circuit
224 court denies a waiver of the requirements of this section. An
225 order authorizing the medical care for the pregnant minor under
226 this subsection is not subject to appeal.

227 (h) Filing fees or court costs may not be required of any
228 pregnant minor who petitions a court for a waiver of the
229 requirements of this section at either the trial or the
230 appellate level.

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

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234 (4) PROCEEDINGS.—The Supreme Court is requested to adopt
235 rules and forms for petitions to ensure that proceedings under
236 subsection (3) are handled expeditiously and in a manner
237 consistent with this act. The Supreme Court is also requested to
238 adopt rules to ensure that the hearings protect the pregnant
239 minor's confidentiality and the confidentiality of the
240 proceedings.

241 (5) REPORT.—The Supreme Court, through the Office of the
242 State Courts Administrator, shall report by February 1 of each
243 year to the Governor, the President of the Senate, and the
244 Speaker of the House of Representatives on the number of
245 petitions filed under subsection (3) for the preceding year, and
246 the timing and manner of disposal of such petitions by each
247 circuit court. For each petition resulting in a waiver of the
248 requirements of this section, the reason for the waiver shall be
249 included in the report.

251 -----

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

253 Remove lines 2-21 and insert:

254 An act relating to the pregnancy of a minor; amending
255 s. 390.0111, F.S.; reclassifying the criminal offense
256 for a specified violation; amending s. 390.01114,
257 F.S.; revising the short title; prohibiting physicians
258 from performing or inducing the termination of the

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259 pregnancy of a minor unless specified requirements are
260 satisfied; requiring a physician to obtain written
261 consent from a minor's parent or legal guardian before
262 performing or inducing a termination of the pregnancy
263 of a minor; requiring the consenting parent or legal
264 guardian to provide specified proof of identification
265 and a specified document to the physician; providing
266 requirements for the document; providing exceptions to
267 such consent requirement; providing criminal penalties
268 for physicians; revising provisions relating to the
269 procedures for judicial waiver to conform to changes
270 made by the act; amending s. 27.511, F.S.; conforming
271 a provision to changes made by the act; amending s.
272 743.065, F.S.; conforming a provision to changes made
273 by the act; creating s. 390.011151, F.S.; providing
274 notice and consent requirements for the provision of
275 medical care to a pregnant minor; providing
276 exceptions; providing certain prohibitions and
277 penalties for physicians; providing procedures for
278 petitions for judicial waiver of the notice and
279 consent requirements; requesting that the Supreme
280 Court adopt rules and forms for such petitions and to
281 ensure the confidentiality of the pregnant minor;
282 requiring the Supreme Court, through the Office of the
283 State Courts Administrator, to report annually to the

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284 Governor and the Legislature by a specified date;
285 providing requirements for such report; providing
286 severability; providing an

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