

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Eskamani offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 306 and 307, insert:

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

7 390.011151 Parental notice of and consent for pregnancy of
8 a minor.-

9 (1) NOTIFICATION REQUIRED.-

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

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

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39 (b) Notice is not required if:

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

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

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

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

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

54 (2) PARENTAL CONSENT REQUIRED.—

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

58 1. The consenting parent or legal guardian shall provide
59 to the physician a copy of a government-issued proof of
60 identification. The parent or legal guardian shall certify in a
61 signed, dated, and notarized document, initialed on each page,
62 that he or she consents to the medical care of the pregnant
63 minor. The document must include the following statement, which

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

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

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

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

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

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

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

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

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

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

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

135 (3) PROCEDURE FOR JUDICIAL WAIVER.-

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

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

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

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

176 1. The minor's:

177 a. Age.

178 b. Overall intelligence.

179 c. Emotional development and stability.

180 d. Credibility and demeanor as a witness.

181 e. Ability to accept responsibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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