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LEGISLATIVE ACTION

Senate

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House

Floor: 2/F/2R

01/29/2020 04:27 PM

Senator Farmer moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 390.01117, Florida Statutes, is created
to read:

390.01117 Parental consent for abortion.-

(1) SHORT TITLE.-This section may be cited as the "Parental
Consent for Abortion Act."

(2) DEFINITIONS.-As used in this section, the term:

(a) "Consent" means a notarized written statement signed by



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12 a minor and either her mother, her father, or her legal guardian
13 declaring that the minor is pregnant, that she intends to seek
14 an abortion, and that her mother, father, or legal guardian, as
15 applicable, consents to the abortion.

16 (b) "Minor" means an unemancipated person younger than 18
17 years of age.

18 (c) "Statement of veto of abortion" means a written
19 statement signed by a minor and either her mother, her father,
20 or her legal guardian declaring that the minor is pregnant, that
21 she desires an abortion, and that her mother, father, or legal
22 guardian, as applicable, objects to the abortion, including a
23 detailed explanation by the minor's mother, father, or legal
24 guardian of the reasons for his or her veto of the abortion.

25 (3) CONSENT OF ONE PARENT OR LEGAL GUARDIAN REQUIRED.—A
26 physician may not perform an abortion on a minor unless the
27 physician has been presented with consent as defined in this
28 section.

29 (4) EXCEPTIONS.—Consent is not required under subsection
30 (3) if:

31 (a) The attending physician certifies in the minor's
32 medical record that a medical emergency, as defined in s.
33 390.01114(2)(d), exists and there is insufficient time to obtain
34 consent;

35 (b) The attending physician certifies in the minor's
36 medical record that the minor's parent or legal guardian has
37 failed to fully and properly complete a statement of veto of
38 abortion within the required time limit established in
39 subsection (5); or

40 (c) Consent is waived under subsection (7).



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41 (5) PROCEDURE FOR STATEMENT OF VETO OF ABORTION.—

42 (a) A minor may request written documentation of a parent's
43 or legal guardian's decision to veto an abortion in the form of
44 a statement of veto of abortion.

45 (b) A parent or legal guardian who vetoes a minor's
46 abortion must complete and sign the statement of veto of
47 abortion within 3 days after the minor requests the statement. A
48 parent's or legal guardian's failure to fully and properly
49 complete a statement of veto of abortion within the required 3-
50 day timeframe constitutes a waiver of the parent's or legal
51 guardian's ability to veto the minor's abortion.

52 (c) Forms for a statement of veto of abortion shall be made
53 available to a minor both online and in print by all of the
54 following entities:

- 55 1. Any abortion provider.
- 56 2. Any crisis pregnancy center.
- 57 3. Any school counselor.
- 58 4. Any court participating in the judicial waiver process.
- 59 5. The Florida Department of Health.

60 (6) DUTIES AND LIABILITIES ASSOCIATED WITH STATEMENTS OF
61 VETO OF ABORTION.—

62 (a) A parent or legal guardian who has completed a
63 statement of veto of abortion is financially responsible for all
64 medical costs associated with the continuation of a pregnancy as
65 a result of the parent's or legal guardian's objection to the
66 abortion, including, but not limited to, all of the following:

- 67 1. Medical appointments, procedures, and equipment.
- 68 2. Prescription medication.
- 69 3. Nonprescription medication.



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70 4. Vitamins or nutritional supplements.

71 5. Psychological care.

72 6. Psychiatric care.

73 (b) A parent or legal guardian who has completed a
74 statement of veto of abortion is financially responsible for all
75 education costs ordinarily or customarily related to a child
76 born as a result of the parent's or legal guardian's objection
77 to the abortion, including, but not limited to, all of the
78 following:

79 1. Costs associated with child care, such as day care or
80 babysitting.

81 2. Pre-kindergarten.

82 3. Private education tuition and fees.

83 4. Parochial education tuition and fees.

84 5. Educational supplies, such as notebooks, pens, pencils,
85 and backpacks.

86 6. Tutoring.

87 7. College or university tuition at a private or public
88 institution.

89 8. Special education programs.

90 (c) A parent or legal guardian who has completed a
91 statement of veto of abortion is financially responsible for all
92 costs ordinarily and customarily related to providing food and
93 housing for a child born as a result of the parent's or legal
94 guardian's veto of abortion, including, but not limited to, all
95 of the following:

96 1. Rent or mortgage for a living space.

97 2. Disposable or reusable diapers.

98 3. Clothing.



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99 4. Food.

100 5. Hygiene items, such as toothbrushes, toothpaste, or
101 sanitary napkins.

102 (7) PROCEDURE FOR JUDICIAL WAIVER OF CONSENT.—

103 (a) A minor may petition any circuit court in the district
104 in which the minor resides for a waiver of the right of the
105 mother, father, or legal guardian to veto an abortion and may
106 participate in proceedings on her own behalf. The petition must
107 include a statement that the minor is pregnant and is
108 unemancipated, that a parent or a legal guardian of the minor
109 has vetoed her right to an abortion, and that the minor wishes
110 to obtain an abortion regardless of the express veto of her
111 parent or legal guardian. The circuit court shall advise the
112 minor that she has a right to court-appointed counsel and shall
113 provide her with counsel upon her request. The court also may
114 appoint a guardian ad litem for the minor. A guardian ad litem
115 appointed under this subsection must maintain the
116 confidentiality of the minor's identity.

117 (b) Court proceedings under this section shall be
118 confidential and must ensure the anonymity of the minor. All
119 court proceedings under this section shall be sealed. The minor
120 may file her petition in the court using a pseudonym or using
121 solely her initials. All documents related to this petition
122 shall be confidential and may not be made available to the
123 public. These proceedings shall be given precedence over other
124 pending matters to the extent necessary to ensure that the court
125 reaches a decision promptly. The court shall rule, and issue
126 written findings of fact and conclusions of law, within 3
127 business days after the petition is filed, except that the 3-



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128 business-day limitation may be extended at the request of the
129 minor.

130 1. If the court fails to rule within the 3-business-day
131 period and an extension has not been requested, the minor may
132 immediately petition for a hearing upon the expiration of the 3-
133 business-day period to the chief judge of the circuit, who must
134 ensure that a hearing is held within 48 hours after receipt of
135 the minor's petition and that an order is entered within 24
136 hours after the hearing.

137 2. If the circuit court does not grant a judicial waiver of
138 consent, the minor has the right to an appeal. An appellate
139 court must rule within 7 days after receipt of the appeal, but a
140 ruling may be remanded with further instruction, in which case a
141 ruling must be made within 3 business days after the remand. The
142 reason for overturning a ruling on appeal must be based on abuse
143 of discretion by the court and may not be based on the weight of
144 the evidence presented to the circuit court, since the
145 proceeding is a nonadversarial proceeding.

146 (c) If the court finds, by clear and convincing evidence,
147 that the minor is sufficiently mature to decide whether to
148 terminate her pregnancy, the court shall issue an order
149 authorizing the minor to obtain an abortion without the consent
150 of a parent or legal guardian. If the court does not make the
151 finding specified in this paragraph or paragraph (d), it must
152 dismiss the petition. The court shall consider whether there may
153 be any undue influence by another on the minor's decision to
154 have an abortion and all of the following factors concerning the
155 minor:

156 1. Age.



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157 2. Overall intelligence.

158 3. Emotional development and stability.

159 4. Credibility and demeanor as a witness.

160 5. Ability to accept responsibility.

161 6. Ability to assess both the immediate and long-range
162 consequences of her choices.

163 7. Ability to understand and explain the medical risks of
164 terminating her pregnancy and to apply that understanding to her
165 decision.

166 (d) If the court finds, by a preponderance of the evidence,
167 that the petitioner is the victim of child abuse or sexual
168 abuse, as those terms are defined in s. 390.01114(2), inflicted
169 by one or both of her parents or her legal guardian, or finds,
170 by clear and convincing evidence, that requiring the consent of
171 a parent or legal guardian is not in the best interest of the
172 petitioner, the court shall issue an order authorizing the minor
173 to obtain an abortion without the consent of a parent or legal
174 guardian. The best-interest standard does not include financial
175 best interest or financial considerations or the potential
176 financial impact on the minor or her family if she does not
177 terminate the pregnancy. If the court finds evidence of child
178 abuse or sexual abuse of the petitioner by any person, the court
179 shall report the evidence of child abuse or sexual abuse of the
180 petitioner, as provided in s. 39.201. If the court does not make
181 the finding specified in this paragraph or paragraph (c), it
182 must dismiss the petition.

183 (e) If the court finds, by a preponderance of the evidence,
184 that a statement of veto of abortion is based predominantly on
185 the philosophical views of the parent or legal guardian, and not



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186 on the best interest of the minor, the court shall grant a
187 judicial waiver of consent.

188 (f) A court that conducts proceedings under this section
189 shall:

190 1. Provide for a written transcript of all testimony and
191 proceedings;

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

196 3. Order that a confidential record be maintained.

197 (g) All hearings under this section, including appeals,
198 shall remain confidential and closed to the public, as provided
199 by court rule.

200 (h) An expedited appeal shall be made available, as the
201 Supreme Court provides by rule, to any minor to whom the circuit
202 court denies a waiver of consent. An order authorizing an
203 abortion without parental consent is not subject to appeal.

204 (i) Filing fees or court costs may not be required of any
205 minor who petitions a court for a waiver of consent under this
206 subsection at either the trial or the appellate level.

207 (j) A county is not required to pay the salaries, costs, or
208 expenses of any counsel appointed by the court under this
209 subsection.

210 (8) RULEMAKING.—The Supreme Court is requested to adopt
211 rules and forms for statements of veto of abortion and for
212 petitions for judicial waiver to ensure that proceedings under
213 subsections (6) and (8) are handled expeditiously and in a
214 manner consistent with this section. The Supreme Court is also



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215 requested to adopt rules to ensure that the hearings protect the
216 confidentiality of the minor's identity and the confidentiality
217 of the proceedings.

218 (9) CRIMINAL PENALTIES AND CIVIL REMEDIES.-

219 (a) Any person who willfully and intentionally performs an
220 abortion with knowledge that, or with reckless disregard as to
221 whether, the minor upon whom the abortion is to be performed is
222 unemancipated without obtaining the required consent commits a
223 misdemeanor of the first degree, punishable as provided in s.
224 775.082 or s. 775.083. It is a defense to prosecution under this
225 section that the minor falsely represented her age or identity
226 to the physician to be at least 18 years of age by displaying an
227 apparently valid governmental record of identification such that
228 a careful and prudent person under similar circumstances would
229 have relied on the representation. The defense does not apply if
230 the physician is shown to have had independent knowledge of the
231 minor's actual age or identity or failed to use due diligence in
232 determining her age or identity.

233 (b) Any person not authorized to provide consent under this
234 section who provides consent commits a misdemeanor of the first
235 degree, punishable as provided in s. 775.082 or s. 775.083.

236 (c) Failure to obtain consent from a person from whom
237 consent is required under this section is prima facie evidence
238 of failure to obtain consent and of interference with family
239 relations in appropriate civil actions. Such prima facie
240 evidence does not apply to any issue other than failure to
241 obtain consent from the parent or legal guardian and
242 interference with family relations in appropriate civil actions.
243 The civil action may be based on a claim that the act was a



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244 result of negligence, gross negligence, wantonness, willfulness,
245 intention, or other legal standard of care. Exemplary damages
246 may be awarded in appropriate civil actions relevant to
247 violations of this section.

248 (d) Failure to comply with the requirements of this section
249 constitutes grounds for disciplinary action under each
250 respective practice act and under s. 456.072.

251 (e) An individual whose pregnancy has continued as a result
252 of her parent's or legal guardian's objection to an abortion may
253 petition a court to recover any expenses provided in subsection
254 (7) which have not been paid directly by the parent or legal
255 guardian who completed the statement of veto of abortion.

256 (f) Any legal expenses and attorney fees incurred while
257 recovering expenses provided in subsection (7) by an individual
258 whose pregnancy has continued as a result of her parent's or
259 legal guardian's objection to an abortion shall be paid by the
260 parent or legal guardian who completed the statement of veto of
261 abortion.

262 (g) An individual whose pregnancy has continued as a result
263 of her parent's or legal guardian's objection to an abortion is
264 entitled to financial compensation from the parent or legal
265 guardian who completed a statement of veto of abortion for any
266 physical, emotional, psychological, or financial damage incurred
267 as a result of the continuation of pregnancy.

268 (h) Any legal expenses and attorney fees incurred while
269 pursuing compensation under paragraph (g) shall be paid by the
270 parent or legal guardian who completed the statement of veto of
271 abortion.

272 (10) CONSTRUCTION.—



273 (a) This section may not be construed to create or
274 recognize a right to abortion.

275 (b) This section may not be construed to limit the common
276 law rights of parents or legal guardians.

277 (c) By enacting this section, the Legislature does not
278 intend to make lawful an abortion that is currently unlawful.

279 (d) This section may not be construed to grant a parent or
280 legal guardian who completes a statement of veto of abortion any
281 right to make or influence decisions regarding a child born as a
282 result of the continuation of pregnancy.

283 (11) SEVERABILITY.—Any provision of this section held to be
284 invalid or unenforceable by its terms, or as applied to any
285 person or circumstance, shall be construed so as to give it the
286 maximum effect permitted by law, unless such holding is one of
287 utter invalidity or unenforceability, in which event such
288 provision shall be deemed severable and may not affect the
289 remainder hereof or the application of such provision to other
290 persons not similarly situated or to other, dissimilar
291 circumstances.

292 Section 2. This act shall take effect July 1, 2020.

293
294 ===== T I T L E A M E N D M E N T =====

295 And the title is amended as follows:

296 Delete everything before the enacting clause
297 and insert:

298 A bill to be entitled
299 An act relating to parental consent for abortion;
300 creating s. 390.01117, F.S.; providing a short title;
301 defining terms; prohibiting a physician from



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302 performing an abortion on a minor unless the physician
303 has been presented with consent from the minor's
304 parent or legal guardian, as appropriate; providing
305 exceptions; authorizing a minor to request a parent or
306 legal guardian document his or her veto of an abortion
307 in a specified form; requiring the parent or legal
308 guardian to complete and sign the form within a
309 specified timeframe; requiring certain entities to
310 make the form available online and in printed format;
311 providing duties and liabilities for a parent or legal
312 guardian who completes the form; authorizing a minor
313 to petition any circuit court in the district in which
314 the minor resides for a waiver of consent required to
315 obtain an abortion; requiring a specified statement to
316 be included in the petition; providing for court-
317 appointed counsel and confidentiality; requiring the
318 court to give precedence to waiver of consent
319 proceedings and requiring a court to rule within a
320 specified timeframe; providing for an extension of
321 time at the request of the minor; authorizing a minor
322 to petition for a hearing upon the expiration of the
323 time allowed and requiring the chief judge of the
324 circuit to ensure that a hearing is held and that an
325 order is entered within specified timeframes;
326 providing for appeals within a specified timeframe;
327 requiring the court to dismiss the petition if it does
328 not make specified findings; requiring the court to
329 consider undue influence on the minor's decision and
330 specified factors; requiring the court to report any



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331 findings of evidence of child abuse or sexual abuse of
332 the petitioner; requiring the court to grant a
333 judicial waiver of consent under certain
334 circumstances; requiring a court to provide for a
335 written transcript of waiver of consent proceedings
336 and to include certain findings and conclusions in its
337 order; prohibiting filing fees or costs for a minor
338 who petitions the court for a waiver of consent;
339 specifying that a county is not required to pay the
340 salaries, costs, or expenses of certain court-
341 appointed counsel; requesting the Supreme Court to
342 adopt certain rules and forms relating to waiver of
343 consent proceedings; providing criminal penalties,
344 disciplinary action, and civil remedies; providing
345 construction and severability; providing an effective
346 date.