The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 404
INTRODUCER:	Rules Committee; Health Policy Committee; Senator Stargel and others
SUBJECT:	Abortion
DATE:	January 23, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke/Kibbey	Brown	HP	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.	Looke	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 404 amends the Parental Notice of Abortion Act in s. 390.01114, F.S., to add consent requirements and renaming the Act as the Parental Notice of and Consent for Abortion Act. The bill prohibits a physician from performing an abortion on a minor unless the physician has received a notarized, written consent statement signed by the minor and her mother, father, or legal guardian and the physician has been presented with proof of identification and proof of parentage or guardianship by the parent or legal guardian. However, the consent requirement does not apply if:

- Notice is not required under specified exceptions to the parental notice requirement;
- The abortion is performed during a medical emergency when there is insufficient time to obtain consent;
- The parent or guardian has waived the right to consent; or
- The minor petitions the circuit court where she resides and receives a judicial waiver of parental consent.

The bill also authorizes a third degree felony penalty for a physician who recklessly or intentionally performs, or attempts to perform, an abortion on an unemancipated minor without the required consent. The bill also increases the penalty for violating requirements established for infants born alive in s. 390.0111(12), F.S., from a first degree misdemeanor to a third degree felony.

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

II. Present Situation:

A Minor's Right to Obtain an Abortion

A minor has a constitutional right to consent to and obtain an abortion.[1] However, that right is not without restrictions. For a minor to obtain an abortion in Florida, she must comply with the provisions of the Parental Notice of Abortion Act contained in s. 390.01114, F.S.

Historical Background of Federal Abortion Law

In a series of decisions rendered over several decades, the United States Supreme Court has established principles governing abortion and a minor's right to obtain an abortion.

Roe v. Wade – A Woman's Constitutional Right to Privacy and Abortion

In 1973, the U.S. Supreme Court issued the primary abortion decision, *Roe v. Wade*.[2] The Court concluded that a woman's right to terminate her pregnancy is entitled to constitutional protection under a right to privacy, even though "The Constitution does not explicitly mention any right of privacy."[3] The Court determined that the right of privacy, whether

> [F]ounded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or as the District Court determined, in the Ninth amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[4]

The right, however, is not absolute and is subject to limitations. The Court noted in a later decision, *Planned Parenthood of Central Missouri v. Danforth*,[5] that the *Roe* Court "emphatically rejected"[6] the argument

> [T]hat the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way and for whatever reason

---

[1] Abortion is defined as the termination of a human pregnancy with an intention *other than* to produce a live birth or remove a dead fetus. s. 390.011(1), F.S. The procedure may only be performed by a state-licensed physician or osteopathic physician or a physician practicing medicine or osteopathic medicine in the employment of the United States. s. 390.011(9), F.S. A pregnancy may not be terminated during the third trimester or once a physician has determined that a fetus has achieved viability unless there is a medical necessity. For an abortion to be performed during the third trimester of pregnancy or upon viability, two physicians must certify in writing that, in reasonable medical judgment, the termination is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition. If a second physician is not available, one physician may certify in writing as to the medical necessity for legitimate emergency medical procedures to terminate the pregnancy. Sections. 390.0111(1) and 390.01112(1), F.S.

[2] *Roe v. Wade*, 410 U.S. 113 (1973).

[3] *Id*. at 151.

[4] *Id.* at 153.

[5] *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976).

[6] *Id*. at 60.

> she alone chooses . . . . Instead, this right must be considered against important state interests in regulation."[7]

The *Roe* Court reasoned that when certain fundamental rights are involved, a state regulation limiting those rights "may be justified only by a 'compelling state interest'" and the state regulations "must be narrowly drawn to express only the legitimate state interests at stake."[8] The Court noted that a state has an important and legitimate interest in protecting the health of the woman as well as protecting the potentiality of human life.[9]

Planned Parenthood v. Casey – The Undue Burden Standard and Substantial Obstacle Test

In 1992, the U.S. Supreme Court issued another significant abortion decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[10] In upholding abortion regulations, the Court adopted the new "undue burden" standard. An undue burden exists and makes a statute invalid if its "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."[11] The Court held that the undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy.

Federal Case Law for Parental Involvement Laws and Bypass Proceedings

In the wake of the *Roe* decision, states began enacting laws to regulate a minor's access to abortion. Appellate courts attempted to reconcile the right of a minor to obtain an abortion with a parent's right to be involved in the daughter's abortion decision. Both the U.S. Supreme Court and the Florida Supreme Court rendered decisions that established frameworks for analyzing whether parental consent and parental notice laws meet constitutional muster.

Planned Parenthood of Central Missouri v. Danforth – Minors are Protected

The U.S. Supreme Court first addressed a parental consent statute in a 1976 decision, *Planned Parenthood of Central Missouri v. Danforth*.[12] The Court struck a Missouri statute that required a minor to obtain the written consent of a parent or person *in loco parentis* before she could obtain an abortion. The Court noted that the state could not impose a blanket parental consent requirement as a condition for abortion and reasoned that the state did not have the constitutional authority to give to "a third party an absolute and possibly arbitrary veto over the decision of the physician" and the minor, "regardless of the reason for withholding the consent." The Court stated that minors, like adults, are protected under the Constitution and possess constitutional rights. Those rights do not "magically" come into being when someone "attains the state-defined age of majority."[13]

---

[7] *Id. at 60, 61* (quoting *Roe*, 410 U.S. at 154).
[8] *Roe* at 155.
[9] *Id*. at 162.
[10] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).
[11] *Id*. at 878.
[12] *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 60 (1976).
[13] *Id.* at 74.

The majority of the Court noted, however, that there can be little doubt that a 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."[14]

Bellotti v. Baird – A Framework for the Judicial Waiver of Parental Consent

In the 1979 decision, *Bellotti v. Baird*,[15] the U.S. Supreme Court commented that "parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions" because immature minors often lack the ability to take into account immediate and long-range consequences.[16]

Although the Court found the particular statute under review unconstitutional because it imposed an "undue burden" on a minor's right to obtain an abortion, it outlined a path forward for parental consent laws to be held constitutional by establishing a judicial waiver of notice, also referred to as a judicial bypass procedure. The Court stated:

> A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the "absolute, and possibly arbitrary, veto" that was found impermissible in *Danforth.*[17]

The Court concluded that "every minor must have the opportunity – if she so desires – to go directly to a court without first consulting or notifying her parents."[18] Under the statutory scheme, however, the court may decline to sanction the abortion if it is not persuaded that the minor is mature or that the abortion is in her best interests.

Planned Parenthood v. Casey

The *Casey* decision mentioned earlier also addressed a one-parent consent statute that contained a judicial bypass procedure. With regard to the parental consent provision, the Court stated:

> We have been over most of this ground before. Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to

[14] *Id*. at 91.
[15] *Bellotti v. Baird*, 443 U.S. 622 (1979)
[16] *Id*. at 640.
[17] *Bellotti*, 443 U.S. at 643, 644.
[18] *Id*. at 647.

obtain the consent of a parent or guardian, provided that there is an adequate judicial bypass procedure.[19]

Lambert v. Wicklund – What a Valid Parental Consent Statute Must Contain

In *Lambert v. Wicklund*, 520 U.S. 292, 295 (1997), the Court distilled the constitutional requirements for a judicial bypass procedure which it had set forth in 1992 in *Bellotti v. Baird*. As restated, a constitutional parental consent statute must:

- Allow 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;
- Allow the minor to bypass the consent requirement if she establishes that the abortion would be in her best interests;
- Ensure the minor's anonymity; and
- Provide for expeditious bypass procedures.

State Parental Involvement Laws for Minors – Parental Notice and Parental Consent

Parental involvement statutes consist of parental *notice* laws and parental *consent* laws. Parental notice laws generally require that one parent, both parents, or a legal guardian be notified by a physician at least 24 or 48 hours before a minor may obtain and a physician may perform an abortion. Under notice laws, the parent or legal guardian is not given "veto" authority over the minor's decision to obtain an abortion. In contrast, parental consent laws generally require that one of a minor's parents sign a consent form before a minor may obtain an abortion. Notice statutes are "less onerous" than consent statutes and, therefore, are less likely to constitute an undue burden on abortion rights.[20]

44 States Have Enacted Parental Involvement Laws

Abortion restrictions for minors vary significantly from state to state. According to data published by two opposing advocacy groups, the Guttmacher Institute,[21] a pro-choice group, and Americans for Life, a pro-life group,[22] and independent research, 44 states have enacted laws that require some form of parental involvement when a minor seeks an abortion. These laws can be placed within broad categories, but there are variations and exceptions that distinguish the enactments. The state laws may be categorized as follows:

- Twenty states require some form of parental consent.
  - The three states that require the consent of *both* parents are Kansas, Mississippi, and North Dakota.
  - The 17 states that require the consent of a single parent are Alabama, Arizona, Arkansas, Idaho, Kentucky, Louisiana, Massachusetts,[23] Michigan, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Wisconsin.

---

[19] *Casey*, at 899.
[20] *Womancare of Orlando v. Agwunobi*, 448 F. Supp. 2d 1309, 1315 (N.D. Fla. 2006).
[21] Guttmacher Institute, *Parental Involvement in Minors' Abortions*, https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions.
[22] Email from Katie Glenn, Americans United for Life (Nov. 20, 2019) (on file with the Senate Committee on Judiciary).
[23] According to the Massachusetts Judiciary Committee, SB 1209 and its companion, HB 3320, are pending before the Legislature. The bills eliminate the current requirement for minors to obtain parental consent before having an abortion.

- Eleven states require only parental notification. Those states are Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maryland, Minnesota, New Hampshire, South Dakota, and West Virginia.
- Five states require both notice and consent. Those states are Oklahoma, Texas, Utah, Virginia, and Wyoming.
- Seven states have passed laws that are temporarily or permanently enjoined. Those states are Alaska, California, Indiana,[24] Montana, Nevada, New Jersey, and New Mexico.
- One state, Maine, has repealed its parental notification law.
- Six states do not appear to have enacted parental involvement laws. Those states are Connecticut, Hawaii, New York, Oregon, Vermont, and Washington.

According to the Guttmacher Institute, all of the states that require parental involvement provide for a judicial bypass procedure, except Maryland. In Maryland, a physician, has the discretion to provide an abortion if he or she believes that: parental notification could lead to abuse of the minor; the minor is mature and capable of giving informed consent; or parental notice would not be in the best interest of the minor.[25]

Florida Abortion Law and Minors' Rights

The State Constitution's Privacy Provision

The Florida Constitution contains an express privacy provision in Article 1, section 23. A similar provision is not found in the United States Constitution. The Florida Supreme Court has determined that the state provision guarantees "an independent right to privacy."[26] As such, Florida courts have interpreted this provision to afford greater privacy rights than the privacy rights of the United States Constitution. The Florida provision states:

> Right of 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 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.

Parental Consent Law

In 1979 the Florida Legislature enacted ch. 79-302, L.O.F., which created s. 458.505, F.S., to establish statutory controls over termination of pregnancy. These controls included the requirement that, prior to performing an abortion on an unmarried pregnant minor, a physician must obtain informed consent from that minor's parent, custodian, or legal guardian, except for cases of medical emergency or cases in which the minor, or another person on her behalf, successfully petitioned the circuit court for an order authorizing the termination of her pregnancy without the consent of a parent, custodian, or legal guardian.

The court was authorized to issue such an order upon a showing of good cause, and good cause could be based, at the discretion of the court, on:

[24] The parental consent law was blocked by the Seventh Circuit Court of Appeals on Aug. 27, 2019. *Planned Parenthood of Indiana and Kentucky, Inc. v. Adams*, 937 F. 3d 973 (7th Cir. 2019).
[25] Maryland Code, Health-General s. 20-103.
[26] *In re T.W.*, 551 So. 2d 1186, 1190 (1989).

- A showing that the minor was sufficiently mature to give informed consent;
- The fact that a parent or guardian unreasonably withheld consent;
- The minor's fear of physical or emotional abuse if her parent or guardian were requested to consent; or
- Any other good cause shown.

The court was authorized to enter its order ex parte. The court was required to determine the best interest of the minor and enter its order in accordance with such determination.

Additionally, in the same 1979 act, the Legislature created s. 458.504, F.S., to establish the right of a pregnant minor to consent to medical care related to her pregnancy, except that the Legislature specifically excluded a minor's consenting to a termination of pregnancy from the types of medical care the minor was allowed to consent to on her own. The other provisions of s. 458.505, F.S., were also excluded from the effects of s. 458.504, F.S. To that end, s. 458.504(3), F.S., provided that "Nothing in this act shall affect the provisions of s. 458.505."[27]

In 1988, the Legislature amended the termination of pregnancies statute (which had been renumbered to ch. 390, F.S.) to require – rather than authorize – the court to issue an order authorizing a minor's termination of pregnancy without the consent of her parent, custodian, or legal guardian if the court determined that the minor was sufficiently mature to give informed consent on her own. The 1988 law also contained provisions to allow a minor who filed such a petition to remain anonymous and to require the court to rule within 48 hours after the petition was filed. The 48-hour limitation could be extended at the request of the minor.[28]

In re T.W., A Minor - The Florida Supreme Court Held the Parental Consent Statute Invalid

In 1989, in the case of *In re T.W.,* the Florida Supreme Court held the parental consent law unconstitutional. The Court determined that a woman's right to privacy, which includes the right to seek an abortion, also extends to a minor. The Court said the statute failed because it intruded upon the "privacy of the pregnant minor from conception to birth."[29] The Court concluded that, under the State Constitution, the state's interest in protecting the potentiality of life by regulating abortion becomes compelling upon viability.[30]

The Privacy Provision is Involved

The Court construed the State Constitution's privacy provision in the *In re T.W.,* decision. The Court stated that, when an abortion is involved:

> Florida's privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy. We can conceive of few more personal or private decisions concerning one's body that one can make in

[27] By using the phrase "Nothing in *this act* shall affect the provisions of s. 458.505," the 1979 law somewhat contradicted itself, since the act itself created that section of statute that the act was not supposed to affect. Since the provision is a subsection of s. 458.504, F.S., it follows that the provision should have been written as "Nothing in *this section* shall affect the provisions of s. 458.505."

[28] Chapter 88-97, s. 6, Laws of Fla.

[29] *In re T.W.,* at 1194.

[30] *In re T.W.,* at 1193-94.

> the course of a lifetime, except perhaps the decision of the terminally ill in their choice of whether to discontinue necessary medical treatment.[31]

The "Compelling Interest Standard" Was Not Met

The Court concluded that, although a minor's rights are not absolute, when privacy rights are involved, the State must demonstrate that the consent statute furthers a "compelling" state interest through the least intrusive means. The state was not entitled to the more relaxed standard of demonstrating a "significant" state interest as required under federal court opinions interpreting the U.S. Constitution.

The Court supported its determination that the compelling interest standard was not met by observing that other statutes allow a minor to consent, without parental approval, for some medical and surgical procedures other than abortion. The Court noted that parental consent was not required and that an unmarried minor could grant consent when she seeks medical treatment during her pregnancy, when she seeks services for her child, or when she places her child for adoption.[32]

The Least Intrusive Means Were Not Used

The Florida Supreme Court also found that the parental consent statute was not the least intrusive means of furthering a state interest because it did not provide adequate procedural safeguards. The Court noted three safeguards that should have been provided but were not:

- Legal counsel during the judicial waiver proceedings;
- A record of the hearing to memorialize the judge's reasons for denying a petition for waiver; and
- Exceptions from the consent requirement for emergency or therapeutic abortions."[33]

Parental Notice of Abortion Acts of 1999 and 2005

The Legislature first enacted a Parental *Notice* of Abortion Act in 1999. As its name indicates, the Act required that a parent be given advance notice of a child's intent to have an abortion.[34] The statute was challenged in court on the basis that the law violated a minor's right to privacy under the Florida Constitution.[35] The Florida Supreme Court determined that the law violated the State Constitution's right to privacy because the minor was not given a method to "bypass" the parental notice requirement when certain circumstances existed.[36]

In response to the Florida Supreme Court's decision, the Legislature proposed a constitutional amendment that authorized the Legislature, notwithstanding a minor's right to privacy under the State Constitution, to require a physician to notify a minor's parent or guardian prior to an abortion. The amendment was ratified by the voters in 2004.[37]

---

[31] *Id.* at 1192.
[32] *Id*. at 1195.
[33] *Id*. at 1196.
[34] Chapter 99-322, Laws of Fla. (Creating s. 390.01115, F.S., effective July 1, 1999. A companion measure, the public records exemption bill that would shield identifying information of the minor, was passed that same session and became Chapter 99-321, Laws of Fla.).
[35] FLA. CONST., art. I s. 23.
[36] *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).
[37] FLA. CONST. art. X. s. 22. The amendment states:

After the adoption of the amendment, the Legislature passed another Parental Notice of Abortion Act in 2005.[38] In its current version, the statute requires an attending physician to give actual notice, in person or by phone, to a parent or legal guardian of the minor, at least 48 hours before the inducement or performance of a termination of a pregnancy on the minor.[39] If actual notice is not possible after a reasonable effort, the physician performing or inducing the termination of the pregnancy or the referring physician must give constructive notice.[40] Parental notice is not required under the Act if certain circumstances are present.[41] The act contains no criminal penalties for a physician who does not comply with the Act although a noncompliant physician may face administrative fines imposed by the Agency for Health Care Administration.

The constitutionality of the Parental Notice Act was challenged immediately in Federal District Court in *Womancare of Orlando, Inc. v. Agwunobi*.[42] The federal court upheld the constitutionality of the Act and dismissed the plaintiffs' claims that the Act violated due process rights, was unconstitutionally vague, and impermissibly burdened the rights of minors to seek an abortion.

Judicial Waiver of Parental Notice or the Judicial Bypass Proceeding

Venue

The Parental Notice of Abortion Act provides that a minor may petition the circuit court *where she resides* for a waiver of the notice requirements.[43] The issue of whether an out-of-state minor was precluded from obtaining a judicial waiver and an abortion under this language was addressed in a 2008 appellate decision.[44] The First District Court of Appeal decided that the language did not prohibit a minor from Georgia from obtaining a judicial waiver and an abortion in Florida. The court reasoned that the language addressed a "venue" provision and the statute was silent about the venue for nonresident minors and did not expressly prohibit nonresidents from seeking a judicial waiver or an abortion in the state. Accordingly, an out-of-state minor could seek the waiver and abortion in Florida.

> 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.

[38] Chapter 2005-52, s. 2, Laws of Fla.

[39] Section. 390.01114(3)(a), F.S. and s. 390.01114(2)(a), F.S.

[40] Section 390.01114(3)(a), F.S. Constructive notice is defined as notice given in writing, signed by the physician, and mailed at least 72 hours before the procedure 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 with delivery restricted to the parent or legal guardian. Notice is deemed to have occurred after 72 hours have passed pursuant to s. 390.01114(2)(c). F.S.

[41] Parental notice is not necessary under s. 390.01114(3)(b), F.S., if: (1) In the good faith clinical judgment of the physician, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements; (2) Notice is waived in writing by the person entitled to notice and the waiver is notarized; (3) Notice is waived by the minor who is or has been married or has had the disability of nonage removed in compliance with law; (4) Notice is waived by the patient because she has a minor child dependent on her; or (5) Notice is waived by a circuit court in a judicial bypass proceeding according to statute.

[42] *Womancare of Orlando v. Agwunobi*, 448 F. Supp. 2d 1309 (N.D. Fla. 2006).

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

[44] *In re Doe 07-B*, 973 So. 2d 627 (Fla. 1st DCA 2008).

The Process

To initiate the process, she may file the petition under a pseudonym or by using initials, as provided by court rule.[45] The petition must contain a statement that the petitioner is pregnant and notice has not been waived. The court must advise the petitioner that she has a right to court-appointed counsel, and must provide her with counsel, if she requests, at no cost to the young woman.[46]

When a minor initiates a judicial bypass proceeding in the circuit court, a private court-appointed attorney is available to represent her should she request counsel.[47] The statute is clear that private court-appointed counsel approved for this type of work are to be used first for minors who request counsel, but if no attorney is available through the clerk's list of attorneys, then the office of criminal conflict and civil regional counsel in that area will supply an attorney for the proceedings.[48] Court precedent interpreting the U.S. Constitution says it is essential that the office's records be exempt from public access.

Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days after the petition is filed. This time period may be extended at the request of the minor.[49]

If the circuit court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian. If the court finds that the minor does not possess the requisite maturity to make that determination, it must dismiss the petition.[50] The court must issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy without notifying a parent or guardian if:

- The court determines by a preponderance of the evidence that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian; or
- The court determines by clear and convincing evidence that the notification of a parent or guardian is not in her best interest.[51]

[45] The Florida Rules of Juvenile Procedure that apply to judicial bypass proceedings are contained in FLA.R.JUV.P.Rule 8.800-Rule 8.840.
[46] *Id.*
[47] The chief judge of the circuit maintains a list of qualified attorneys in private practice, by county and by category of cases, and provides the list to the clerk of court in each county. Section 27.40(3)(a), F.S.
[48] Section 27.511(6)(a), F.S.
[49] Section 390.01114(4)(b)1., F.S. If the court does not rule within the required 3 business days and the minor has not requested an extension, the minor may immediately petition for a hearing with the chief judge of the circuit. The chief judge is responsible for guaranteeing that a hearing is held within 48 hours after the receipt of the minor's petition and an order must be entered within 24 hours after the hearing. If the circuit court does not grant a judicial waiver of the required parental notice, the minor has a right to appeal and that ruling must be issued within seven days after receipt of the appeal. Section 390.01114(4)(b)2., F.S.
[50] Section 390.01114(4)(c), F.S.
[51] Section 390.01114(4)(d), F.S.

Florida Abortion Statistics

While state laws specify what abortion data must be reported, there is no requirement that the state collect data documenting how many minors receive abortions. Therefore, it is unknown how many minors obtain abortions in the state annually. However, according to the Agency for Health Care Administration, 62,731 abortions or terminations of pregnancy were performed in Florida in 2019 as of October 30, 2019.[52] The agency reported that 70,239 terminations were performed in 2018 and 69,102 were reported in 2017.[53]

Florida Statistics –Petitions filed by Minors for Judicial Bypass Waivers

The Florida Supreme Court, through the Office of the State Courts Administrator, is required to report by February 1 of each year the number of petitions filed in the previous year by minors seeking judicial waiver of parental notice. According to these reports, during the last 10 years, there have been 3,017 petitions filed for a judicial waiver of notice. The courts have dismissed 206 of those petitions.[54] Accordingly, judicial waiver of notices are granted in approximately 92.7 percent of all requests. The data from those reports is summarized as follows:

Year	Petitions Filed	Petitions Dismissed	Percentage of Petitions Dismissed
2018	193	11	5.70
2017	224	18	8.04
2016	193	15	7.77
2015	245	13	5.31
2014	242	23[55]	9.50
2013	319	33[56]	10.34
2012	353	38[57]	10.76
2011	391	18[58]	4.60
2010	381	10	2.62
2009	476	27	5.67
Total	3,017	206	6.83

[52] According to the Agency for Health Care Administration, this figure might include some abortions performed and reported in early November, 2019, but that is uncertain. Data reporting the total number of abortions performed in 2019 will not be posted until February 2020.
[53] Agency for Health Care Administration, *Abortion Data – Induced Terminations of Pregnancy [ITOP] Reports*, https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/Reports.shtml.
[54] Florida Office of the State Courts Administrator, *Fiscal Years 2009-2018, Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December* (on file with the Senate Committee on Judiciary).
[55] Two counties each had one petition filed during calendar year 2013 that was disposed of during calendar year 2014.
[56] Two counties each had one petition filed during calendar year 2013 that was not disposed of during calendar year 2013.
[57] Three counties had a total of three petitions filed during calendar year 2011 that were disposed of during calendar year 2012.
[58] Two counties had a total of three petitions filed in calendar year 2011 that were not disposed of during calendar year 2011.

III. Effect of Proposed Changes:

CS/CS/SB 404 amends the Parental Notice of Abortion Act in s. 390.01114, F.S., to also require parental consent for a physician to perform an abortion on a minor.

Consent of Parent of Legal Guardian Required

The bill prohibits a physician from performing an abortion on a minor younger than 18 years of age[59] unless the physician has received a notarized, written consent statement signed, dated, and initialed on each page by the minor and her mother, father, or legal guardian. The statement must include the following language:

"I, (insert name of parent or legal guardian), am the (select "parent" or "legal guardian," as appropriate) of (insert name of minor) and give consent for (insert name of physician) to perform or induce a termination of pregnancy on her. Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true."

Additionally, the parent or legal guardian must provide to the physician a copy of his or her government-issued identification and written documentation establishing that he or she is the lawful parent or legal guardian of the minor. This documentation must be attached to the notarized form and the physician is required to keep a copy of the documentation, including the notarized form, in the minor's medical file for five years after the minor turns 18 but for no less than seven years. The physician must also execute an affidavit stating: "I, (insert name of physician), certify that, according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and her parent or legal guardian as sufficient evidence of identity." This affidavit must be included in the minor's medical file.

The consent requirement does not apply if:

- Notification is not required because:
  - An emergency situation exists;
  - Notice has been waived by a minor who is, or has been, married or who has had the disability of nonage removed under s. 743.015, F.S.; or
  - Notice is waived because the patient has a minor child dependent on her.
- The attending physician certifies in the minor's record that a medical emergency[60] exists and there is insufficient time to obtain consent;
- Notification is not required due to the existence of a waiver of the right to notification if:
  - The waiver is signed by the minor's parent or legal guardian;
  - Is notarized;
  - Is dated within 30 days before the termination of the pregnancy;

[59] An unemancipated minor is someone who has not reached full legal age. A minor is considered emancipated when he or she is independent of parental control, generally as the result of a court order or statute. BLACK'S LAW DICTIONARY (11th ed. 2019).

[60] A medical emergency is defined in s. 390.01114(2)(d), F.S., to mean a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

- contains a specific waiver of the right of the parent or legal guardian to consent to the minor's termination of pregnancy; and
- A copy of a government-issued proof of identification and written documentation establishing that the person who signed the waiver is the lawful parent or legal guardian, as applicable, of the minor is attached to the waiver; or

- Consent is waived because the minor successfully petitions the circuit court where she resides and receives a judicial waiver of the consent requirement.

Procedure for Judicial Waiver of Consent

The bill applies current law standards for obtaining a judicial waiver of notification to the bill's procedures for obtaining a judicial waiver of consent. The bill amends these standards in that the court is required to, upon request, provide counsel for the minor at least 24 hours before the court proceeding, and the proceedings are required, subject to the judge's availability pursuant to s. 26.20, F.S., to be held in chambers or in a similarly private and informal setting within the courthouse.

Criminal Penalties and Civil Liability

The bill establishes that it is a third degree felony for a physician to intentionally or recklessly perform or induce, or attempt to perform or induce, a termination of a pregnancy of a minor without obtaining the required consent. No penalty may be assessed on the minor upon whom the termination of pregnancy is performed or attempted.

Additionally, the bill increases the penalty for violating requirements established for infants born alive in s. 390.0111(12), F.S., from a first degree misdemeanor to a third degree felony.

Severability Clause

The bill provides that if any provision of the bill, or its application to any person or circumstance, is held to be invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or its application, and to this end the provisions of the bill are severable.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill's provisions may implicate the privacy rights established in Art. I, s. 23, of the Florida Constitution. For a discussion on the relevant case law, please see the "Present Situation" section of this analysis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 390.0111 and 390.01114 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on January 22, 2020:
The CS:

- Changes title from "parental consent for abortion" to "abortion"
- Increases the penalty for violating requirements established for infants born alive in s. 390.0111(12), F.S., from a first degree misdemeanor to a third degree felony.

- Adds consent requirements to current notice requirements in s. 390.01114, F.S., rather than creating a new section (390.01117, F.S.) specific to consent.
- In order to give consent, requires the parent or Legal Guardian (LG) to sign a notarized form with specified language, present ID and proof of parentage to the physician, and attach a copy of the ID and proof of parentage to the notarized form.
  - The Physician must keep the form and attached documentation for 5 years after the minor reaches age 18 but no less than 7 years.
  - The Physician must sign an affidavit stating that the information he or she received was reliable to the best of his or her knowledge. The affidavit must be included in the medical record.
- Provides exceptions to the requirement to obtain consent when:
  - An emergency situation exists. Before performing the abortion in an emergency, the physician must make reasonable attempts to contact the parent or LG and the physician must inform the parent or LG within 24 hours after the abortion is performed by telephone. The physician must also provide the required information by mail.
  - Parental notice is not required due to an emergency, because notice has been waived by a minor that is married or has had the disability of nonage removed, notice has been waived because the minor patient has a minor child dependent on her.
  - Notification is not required due to the existence of a waiver of the right to notification that also specifies that the parent or LG is waiving the right to consent and other specified conditions are met.
  - Consent is waived by the court through the established judicial process.
- Establishes that it is a felony of the 3rd degree for a physician to intentionally or recklessly perform an abortion without obtaining consent. The physician may defend this charge by showing that the minor misrepresented her age. The physician must have a copy of the minor's ID card showing that the minor misrepresented her age.
- Incorporates the procedure for obtaining a judicial waiver of consent into the procedures in current law for obtaining a judicial waiver of notice.
- Requires the hearing to be conducted in the judge's chambers or other similarly private and informal setting in the courthouse subject to the judge's availability.
- Specifies that the provisions of the act are severable.

CS by Health Policy on December 10, 2019:
The CS defines the term "minor" as an unemancipated person younger than 18 years of age, whereas the underlying bill defined "minor" as a person under the age of 18 years.

B. Amendments:

None.