

By the Committees on Rules; and Health Policy; and Senators Stargel, Hutson, Harrell, Gruters, Mayfield, Baxley, Diaz, Albritton, and Broxson

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1 A bill to be entitled
2 An act relating to abortion; amending s. 390.0111,
3 F.S.; reclassifying the criminal offense for a
4 specified violation; amending s. 390.01114, F.S.;
5 revising the short title; prohibiting physicians from
6 performing or inducing the termination of the
7 pregnancy of a minor unless specified requirements are
8 satisfied; requiring a physician to obtain written
9 consent from a minor's parent or legal guardian before
10 performing or inducing a termination of the pregnancy
11 of a minor; requiring the consenting parent or legal
12 guardian to provide specified proof of identification
13 and a specified document to the physician; providing
14 requirements for the document; providing exceptions to
15 such consent requirement; providing criminal penalties
16 for physicians; revising provisions relating to the
17 procedures for judicial waiver to conform to changes
18 made by the act; amending s. 27.511, F.S.; conforming
19 a provision to changes made by the act; providing
20 severability; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (e) of subsection (12) of section
25 390.0111, Florida Statutes, is amended to read:

26 390.0111 Termination of pregnancies.—

27 (12) INFANTS BORN ALIVE.—

28 (e) A person who violates this subsection commits a felony
29 of the third ~~misdemeanor of the first~~ degree, punishable as

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30 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084. This
31 subsection shall not be construed as a specific provision of law
32 relating to a particular subject matter that would preclude
33 prosecution of a more general offense, regardless of the
34 penalty.

35 Section 2. Present subsections (3), (4), (5), and (6) of
36 section 390.01114, Florida Statutes, are redesignated as
37 subsections (4), (6), (7), and (8), respectively, new
38 subsections (3) and (5) are added to that section, and
39 subsection (1), paragraph (b) of present subsection (3), and
40 present subsections (4), (5), and (6) are amended, to read:

41 390.01114 Parental Notice of and Consent for Abortion Act.—

42 (1) SHORT TITLE.—This section may be cited as the "Parental
43 Notice of and Consent for Abortion Act."

44 (3) TERMINATION OF THE PREGNANCY OF A MINOR.—A physician
45 may not perform or induce the termination of a pregnancy of a
46 minor unless the physician has complied with the notice and
47 consent requirements of this section.

48 ~~(4)~~ (3) NOTIFICATION REQUIRED.—

49 (b) Notice is not required if:

50 1. In the physician's good faith clinical judgment, a
51 medical emergency exists and there is insufficient time for the
52 attending physician to comply with the notification
53 requirements. If a medical emergency exists, the physician shall
54 make reasonable attempts, whenever possible, without endangering
55 the minor, to contact the parent or legal guardian, and may
56 proceed, but must document reasons for the medical necessity in
57 the patient's medical records. The physician shall provide
58 notice directly, in person or by telephone, to the parent or

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59 legal guardian, including details of the medical emergency and
60 any additional risks to the minor. If the parent or legal
61 guardian has not been notified within 24 hours after the
62 termination of the pregnancy, the physician shall provide notice
63 in writing, including details of the medical emergency and any
64 additional risks to the minor, signed by the physician, to the
65 last known address of the parent or legal guardian of the minor,
66 by first-class mail and by certified mail, return receipt
67 requested, with delivery restricted to the parent or legal
68 guardian;

69 2. Notice is waived in writing by the person who is
70 entitled to notice and such waiver is notarized, dated not more
71 than 30 days before the termination of pregnancy, and contains a
72 specific waiver of the right of the parent or legal guardian to
73 notice of the minor's termination of pregnancy;

74 3. Notice is waived by the minor who is or has been married
75 or has had the disability of nonage removed under s. 743.015 or
76 a similar statute of another state;

77 4. Notice is waived by the patient because the patient has
78 a minor child dependent on her; or

79 5. Notice is waived under subsection (6) ~~(4)~~.

80 (5) PARENTAL CONSENT REQUIRED.-

81 (a) A physician must obtain written consent from a parent
82 or legal guardian before performing or inducing the termination
83 of a pregnancy of a minor.

84 1. The consenting parent or legal guardian shall provide to
85 the physician a copy of a government-issued proof of
86 identification and written documentation establishing that he or
87 she is the lawful parent or legal guardian of the minor. The

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88 parent or legal guardian shall certify in a signed, dated, and
89 notarized document, initialed on each page, that he or she
90 consents to the termination of the pregnancy of the minor. The
91 document must include the following statement, which must
92 precede the signature of the parent or guardian: "I, (insert
93 name of parent or legal guardian), am the (select "parent" or
94 "legal guardian," as appropriate) of (insert name of minor) and
95 give consent for (insert name of physician) to perform or induce
96 a termination of pregnancy on her. Under penalties of perjury, I
97 declare that I have read the foregoing statement and that the
98 facts stated in it are true." A copy of the parent's or legal
99 guardian's government-issued proof of identification
100 establishing that he or she is the minor's lawful parent or
101 legal guardian must be attached to the notarized document.

102 2. The physician shall keep a copy of the proof of
103 identification of the parent or legal guardian and the certified
104 statement in the medical file of the minor for 5 years after the
105 minor reaches the age of 18 years, but in no event less than 7
106 years.

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

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

115 1. Notification is not required as provided in subparagraph
116 (4) (b) 1., subparagraph (4) (b) 3., subparagraph (4) (b) 4., or

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117 subparagraph (4) (b) 5.;

118 2. Notification is not required due to the existence of a
119 waiver as provided in subparagraph (4) (b) 2., if that waiver is
120 signed by the minor's parent or legal guardian, is notarized, is
121 dated within 30 days before the termination of the pregnancy,
122 contains a specific waiver of the right of the parent or legal
123 guardian to consent to the minor's termination of pregnancy, and
124 a copy of a government-issued proof of identification and
125 written documentation establishing that the person who signed
126 the waiver is the lawful parent or legal guardian, as
127 applicable, of the minor is attached to the waiver;

128 3. Consent is waived under subsection (6); or

129 4. In the physician's good faith clinical judgment, a
130 medical emergency exists and there is insufficient time for the
131 attending physician to comply with the consent requirement. If a
132 medical emergency exists, the physician must make reasonable
133 attempts, whenever possible, and without endangering the minor,
134 to contact the parent or legal guardian of the minor, and may
135 proceed, but must document reasons for the medical necessity in
136 the minor patient's medical records. The physician shall inform
137 the parent or legal guardian, in person or by telephone, within
138 24 hours after the termination of the pregnancy of the minor,
139 including details of the medical emergency that necessitated the
140 termination of the pregnancy without the parent's or legal
141 guardian's consent. The physician shall also provide this
142 information in writing to the parent or legal guardian at his or
143 her last known address, by first-class mail or by certified
144 mail, return receipt requested, with delivery restricted to the
145 parent or legal guardian.

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146 (c)1. A physician who intentionally or recklessly performs
147 or induces, or attempts to perform or induce, a termination of a
148 pregnancy of a minor without obtaining the required consent
149 pursuant to this subsection commits a felony of the third
150 degree, punishable as provided in s. 775.082, s. 775.083, or s.
151 775.084. A penalty may not be assessed against the minor upon
152 whom a termination of pregnancy is performed or induced or upon
153 whom a termination of pregnancy is attempted to be performed or
154 induced.

155 2. It is a defense to prosecution that a minor
156 misrepresented her age or identity to a physician by displaying
157 a driver license or identification card issued by the state or
158 another state which indicated that the minor was 18 years of age
159 or older and that the appearance of the minor was such that a
160 reasonably prudent person would believe that the minor was not
161 under 18 years of age. To use the defense, a physician must
162 provide a copy of the driver license or identification card used
163 by the minor. The defense does not apply if the physician is
164 shown to have had independent knowledge of the minor's actual
165 age or identity or to have failed to use due diligence in
166 determining the minor's age or identity.

167 (6)-(4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.-

168 (a) A minor may petition any circuit court in which the
169 minor resides for a waiver of the ~~notice~~ requirements of this
170 section subsection (3) and may participate in proceedings on her
171 own behalf. The petition may be filed under a pseudonym or
172 through the use of initials, as provided by court rule. The
173 petition must include a statement that the petitioner is
174 pregnant and that the requirements of this section have ~~notice~~

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175 ~~has~~ not been waived. The court shall advise the minor that she
176 has a right to court-appointed counsel ~~and shall provide her~~
177 ~~with counsel upon her request~~ at no cost to the minor. The court
178 shall, upon request, provide counsel for the minor at least 24
179 hours before the court proceeding.

180 (b)1. Court proceedings under this section ~~subsection~~ must
181 be given precedence over other pending matters to the extent
182 necessary to ensure that the court reaches a decision promptly.
183 The court shall rule, and issue written findings of fact and
184 conclusions of law, within 3 business days after the petition is
185 filed, except that the 3-business-day limitation may be extended
186 at the request of the minor. If the court fails to rule within
187 the 3-business-day period and an extension has not been
188 requested, the minor may immediately petition for a hearing upon
189 the expiration of the 3-business-day period to the chief judge
190 of the circuit, who must ensure a hearing is held within 48
191 hours after receipt of the minor's petition and an order is
192 entered within 24 hours after the hearing.

193 2. If the circuit court does not grant judicial waiver of
194 the requirements of this section ~~notice~~, the minor has the right
195 to appeal. An appellate court must rule within 7 days after
196 receipt of appeal, but a ruling may be remanded with further
197 instruction for a ruling within 3 business days after the
198 remand. The reason for overturning a ruling on appeal must be
199 based on abuse of discretion by the court and may not be based
200 on the weight of the evidence presented to the circuit court
201 since the proceeding is a nonadversarial proceeding.

202 (c) If the court finds, by clear and convincing evidence,
203 that the minor is sufficiently mature to decide whether to

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204 terminate her pregnancy, the court shall issue an order
205 authorizing the minor to consent to the performance or
206 inducement of a termination of the pregnancy ~~without the~~
207 ~~notification of a parent or guardian~~. If the court does not make
208 the finding specified in this paragraph or paragraph (d), it
209 must dismiss the petition. Factors the court shall consider
210 include:

211 1. The minor's:

212 a. Age.

213 b. Overall intelligence.

214 c. Emotional development and stability.

215 d. Credibility and demeanor as a witness.

216 e. Ability to accept responsibility.

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

219 g. Ability to understand and explain the medical risks of
220 terminating her pregnancy and to apply that understanding to her
221 decision.

222 2. Whether there may be any undue influence by another on
223 the minor's decision to have an abortion.

224 (d) If the court finds, by a preponderance of the evidence,
225 that the petitioner is the victim of child abuse or sexual abuse
226 inflicted by one or both of her parents or her guardian, or by
227 clear and convincing evidence that the requirements of this
228 section are ~~notification of a parent or guardian~~ is not in the
229 best interest of the petitioner, the court shall issue an order
230 authorizing the minor to consent to the performance or
231 inducement of a termination of the pregnancy ~~without the~~
232 ~~notification of a parent or guardian~~. The best-interest standard

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233 does not include financial best interest or financial
234 considerations or the potential financial impact on the minor or
235 the minor's family if the minor does not terminate the
236 pregnancy. If the court finds evidence of child abuse or sexual
237 abuse of the minor petitioner by any person, the court shall
238 report the evidence of child abuse or sexual abuse of the
239 petitioner, as provided in s. 39.201. If the court does not make
240 the finding specified in this paragraph or paragraph (c), it
241 must dismiss the petition.

242 (e) A court that conducts proceedings under this section
243 shall:

244 1. Provide for a written transcript of all testimony and
245 proceedings;

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

250 3. Order that a confidential record be maintained, as
251 required under s. 390.01116.

252 (f) All hearings under this section, including appeals,
253 shall remain confidential and closed to the public, as provided
254 by court rule. Subject to a judge's availability as required
255 under s. 26.20, hearings held under this section must be held in
256 chambers or in a similarly private and informal setting within
257 the courthouse.

258 (g) An expedited appeal shall be made available, as the
259 Supreme Court provides by rule, to any minor to whom the circuit
260 court denies a waiver of the requirements of this section
261 ~~notice~~. An order authorizing a termination of pregnancy under

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262 this subsection ~~without notice~~ is not subject to appeal.

263 (h) Filing fees or court costs may not be required of any
264 pregnant minor who petitions a court for a waiver of the
265 requirements of this section ~~parental notification under this~~
266 ~~subsection~~ at either the trial or the appellate level.

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

270 (7) ~~(5)~~ PROCEEDINGS.—The Supreme Court is requested to adopt
271 rules and forms for petitions to ensure that proceedings under
272 subsection (6) ~~(4)~~ are handled expeditiously and in a manner
273 consistent with this act. The Supreme Court is also requested to
274 adopt rules to ensure that the hearings protect the minor's
275 confidentiality and the confidentiality of the proceedings.

276 (8) ~~(6)~~ REPORT.—The Supreme Court, through the Office of the
277 State Courts Administrator, shall report by February 1 of each
278 year to the Governor, the President of the Senate, and the
279 Speaker of the House of Representatives on the number of
280 petitions filed under subsection (6) ~~(4)~~ for the preceding year,
281 and the timing and manner of disposal of such petitions by each
282 circuit court. For each petition resulting in a waiver of the
283 requirements of this section ~~notice~~, the reason for the waiver
284 shall be included in the report.

285 Section 3. Paragraph (a) of subsection (6) of section
286 27.511, Florida Statutes, is amended to read:

287 27.511 Offices of criminal conflict and civil regional
288 counsel; legislative intent; qualifications; appointment;
289 duties.—

290 (6) (a) The office of criminal conflict and civil regional

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291 counsel has primary responsibility for representing persons
292 entitled to court-appointed counsel under the Federal or State
293 Constitution or as authorized by general law in civil
294 proceedings, including, but not limited to, proceedings under s.
295 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and
296 proceedings to terminate parental rights under chapter 63.
297 Private court-appointed counsel eligible under s. 27.40 have
298 primary responsibility for representing minors who request
299 counsel under s. 390.01114, the Parental Notice of and Consent
300 for Abortion Act; however, the office of criminal conflict and
301 civil regional counsel may represent a minor under that section
302 if the court finds that no private court-appointed attorney is
303 available.

304 Section 4. If any provision of this act or its application
305 to any person or circumstance is held invalid, the invalidity
306 does not affect other provisions or applications of the act
307 which can be given effect without the invalid provision or its
308 application, and to this end the provisions of this act are
309 severable.

310 Section 5. This act shall take effect July 1, 2020.