

CHAPTER 2020-147

Committee Substitute for Committee Substitute for Senate Bill No. 404

An act relating to abortion; amending s. 390.0111, F.S.; reclassifying the criminal offense for a specified violation; amending s. 390.0114, F.S.; revising the short title; prohibiting physicians from performing or inducing the termination of the pregnancy of a minor unless specified requirements are satisfied; requiring a physician to obtain written consent from a minor's parent or legal guardian before performing or inducing a termination of the pregnancy of a minor; requiring the consenting parent or legal guardian to provide specified proof of identification and a specified document to the physician; providing requirements for the document; providing exceptions to such consent requirement; providing criminal penalties for physicians; revising provisions relating to the procedures for judicial waiver to conform to changes made by the act; amending s. 27.511, F.S.; conforming a provision to changes made by the act; amending s. 743.065, F.S.; conforming a provision to changes made by the act; providing severability; providing an effective date.

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

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

390.0111 Termination of pregnancies.—

(12) INFANTS BORN ALIVE.—

(e) A person who violates this subsection commits a felony of the third misdemeanor of the first degree, punishable as provided in s. 775.082, ~~or s. 775.083, or s. 775.084~~. This subsection shall not be construed as a specific provision of law relating to a particular subject matter that would preclude prosecution of a more general offense, regardless of the penalty.

Section 2. Present subsections (3), (4), (5), and (6) of section 390.0114, Florida Statutes, are redesignated as subsections (4), (6), (7), and (8), respectively, new subsections (3) and (5) are added to that section, and subsection (1), paragraph (b) of present subsection (3), and present subsections (4), (5), and (6) are amended, to read:

390.0114 Parental Notice of and Consent for Abortion Act.—

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

(3) TERMINATION OF THE PREGNANCY OF A MINOR.—A physician may not perform or induce the termination of a pregnancy of a minor

unless the physician has complied with the notice and consent requirements of this section.

~~(4)~~(3) NOTIFICATION REQUIRED.—

(b) Notice is not required if:

1. In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements. If a medical emergency exists, the physician shall make reasonable attempts, whenever possible, without endangering the minor, to contact the parent or legal guardian, and may proceed, but must document reasons for the medical necessity in the patient's medical records. The physician shall provide notice directly, in person or by telephone, to the parent or legal guardian, including details of the medical emergency and any additional risks to the minor. If the parent or legal guardian has not been notified within 24 hours after the termination of the pregnancy, the physician shall provide notice in writing, including details of the medical emergency and any additional risks to the minor, signed by the physician, 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;

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

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

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

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

(5) PARENTAL CONSENT REQUIRED.—

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

1. The consenting parent or legal guardian shall provide to the physician a copy of a government-issued proof of identification. The parent or legal guardian shall certify in a signed, dated, and notarized document, initialed on each page, that he or she consents to the termination of the pregnancy of the minor. The document must include the following statement, which must precede the signature of the parent or guardian: "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.” A copy of the parent’s or legal guardian’s government-issued proof of identification must be attached to the notarized document.

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

3. A physician receiving consent from a parent or guardian under this section shall execute for inclusion in the medical record of the minor 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.”

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

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

2. Notification is not required due to the existence of a waiver as provided in subparagraph (4)(b)2., if that waiver is signed by the minor’s parent or legal guardian, is notarized, is dated within 30 days before the termination of the pregnancy, 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 the parent’s or legal guardian’s government-issued proof of identification is attached to the waiver;

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

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

(c)1. A physician who intentionally or recklessly performs or induces, or attempts to perform or induce, a termination of a pregnancy of a minor without obtaining the required consent pursuant to this subsection commits

a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A penalty may not be assessed against the minor upon whom a termination of pregnancy is performed or induced or upon whom a termination of pregnancy is attempted to be performed or induced.

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

(6)(4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.—

(a) A minor may petition any circuit court in which the minor resides for a waiver of the notice requirements of this section ~~subsection (3)~~ and may participate in proceedings on her own behalf. The petition may be filed under a pseudonym or through the use of initials, as provided by court rule. The petition must include a statement that the petitioner is pregnant and that the requirements of this section have notice ~~has not been waived~~. The court shall advise the minor that she has a right to court-appointed counsel ~~and shall provide her with counsel upon her request~~ at no cost to the minor. The court shall, upon request, provide counsel for the minor at least 24 hours before the court proceeding.

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

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

(c) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy without the notification of a parent or guardian. If the court does not make the finding specified in this paragraph or paragraph (d), it must dismiss the petition. Factors the court shall consider include:

1. The minor's:
 - a. Age.
 - b. Overall intelligence.
 - c. Emotional development and stability.
 - d. Credibility and demeanor as a witness.
 - e. Ability to accept responsibility.
 - f. Ability to assess both the immediate and long-range consequences of the minor's choices.
 - g. Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.
2. Whether there may be any undue influence by another on the minor's decision to have an abortion.

(d) If the court finds, by a preponderance of the evidence, that the petitioner is the victim of child abuse or sexual abuse inflicted by one or both of her parents or her guardian, or by clear and convincing evidence that the requirements of this section are notification of a parent or guardian is not in the best interest of the petitioner, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy without the notification of a parent or guardian. The best-interest standard does not include financial best interest or financial considerations or the potential financial impact on the minor or the minor's family if the minor does not terminate the pregnancy. If the court finds evidence of child abuse or sexual abuse of the minor petitioner by any person, the court shall report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201. If the court does not make the finding specified in this paragraph or paragraph (c), it must dismiss the petition.

- (e) A court that conducts proceedings under this section shall:
1. Provide for a written transcript of all testimony and proceedings;
 2. Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal

conclusions relating to the maturity of the minor as provided under paragraph (c); and

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

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

(g) An expedited appeal shall be made available, as the Supreme Court provides by rule, to any minor to whom the circuit court denies a waiver of the requirements of this section ~~notice~~. An order authorizing a termination of pregnancy under this subsection ~~without notice~~ is not subject to appeal.

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

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

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

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

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

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

(6)(a) The office of criminal conflict and civil regional counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law in civil proceedings, including, but not limited to, proceedings under s. 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and proceedings to terminate parental rights under chapter 63. Private court-appointed counsel

eligible under s. 27.40 have primary responsibility for representing minors who request counsel under s. 390.01114, the Parental Notice of and Consent for Abortion Act; however, the office of criminal conflict and civil regional counsel may represent a minor under that section if the court finds that no private court-appointed attorney is available.

Section 4. Subsection (3) of section 743.065, Florida Statutes, is amended to read:

743.065 Unwed pregnant minor or minor mother; consent to medical services for minor or minor’s child valid.—

(3) Nothing in this section act shall affect the provisions of chapter 390 s-390.0111.

Section 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or its application, and to this end the provisions of this act are severable.

Section 6. This act shall take effect July 1, 2020.

Approved by the Governor June 30, 2020.

Filed in Office Secretary of State June 30, 2020.