

By Senator Stargel

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1                   A bill to be entitled  
2           An act relating to parental consent for abortion;  
3           creating s. 390.01117, F.S.; providing a short title;  
4           defining terms; prohibiting a physician from  
5           performing an abortion on a minor unless the physician  
6           has been presented with consent from the minor's  
7           parent or guardian, as appropriate; providing an  
8           exception for a medical emergency; requiring a monthly  
9           report to be filed by certain physicians with the  
10          Department of Health on a form adopted by department  
11          rule; requiring the department to compile data  
12          collected from such forms and make it available on its  
13          website; authorizing a minor to petition any circuit  
14          court in which the minor resides for a waiver of  
15          consent required to obtain an abortion; requiring a  
16          specified statement to be included in the petition;  
17          providing for court-appointed counsel and  
18          confidentiality; requiring the court to give  
19          preference to waiver of consent proceedings and  
20          requiring a court to rule within a specified  
21          timeframe; providing for an extension of time at the  
22          request of the minor; authorizing a minor to petition  
23          for a hearing upon the expiration of the time allowed  
24          and requiring the chief judge of the circuit to ensure  
25          that a hearing is held and that an order is entered  
26          within specified timeframes; providing for appeals  
27          within a specified timeframe; requiring the court to  
28          dismiss the petition if it does not make specified  
29          findings; requiring the court to consider undue

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30 influence on the minor's decision and specified  
31 factors; requiring the court to report any findings of  
32 evidence of child abuse or sexual abuse of the  
33 petitioner; requiring a court to provide for a written  
34 transcript of waiver of consent proceedings and  
35 include certain findings and conclusions in its order;  
36 prohibiting filing fees or costs for a minor who  
37 petitions the court for a waiver of consent;  
38 specifying that a county is not required to pay the  
39 salaries, costs, or expenses of certain court-  
40 appointed counsel; requesting the Supreme Court to  
41 adopt certain rules and forms relating to waiver of  
42 consent proceedings; providing criminal penalties and  
43 disciplinary action; providing construction and  
44 severability; providing an effective date.

45  
46 WHEREAS, the United States Supreme Court has consistently  
47 recognized that a state statute requiring parental consent to a  
48 minor's abortion is constitutional if it provides a judicial  
49 alternative in which the consent is waived if the minor is  
50 mature enough to make the decision to obtain an abortion or if  
51 the abortion is in the minor's best interest, and

52 WHEREAS, the medical, emotional, and psychological  
53 consequences associated with having an abortion are serious and  
54 can be long-lasting, particularly when a patient is immature,  
55 and

56 WHEREAS, the status of minors under the law is unique  
57 because of their need for parental guidance and decisionmaking,  
58 and

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59 WHEREAS, minors' disability of nonage defaults to a legal  
60 disability to contract which only the Legislature can remove,  
61 and such legislative removals of disability of nonage are  
62 codified in chapter 743, Florida Statutes, and

63 WHEREAS, while the laws of this state allow minors who are  
64 mothers to make life and death decisions for their children,  
65 there is a distinction between making day-to-day decisions for a  
66 child and deciding to abort a child, and

67 WHEREAS, the only circumstance in which medical decisions  
68 for a minor are not made by the minor's parents is when the  
69 minor is pregnant, and

70 WHEREAS, section 743.065, Florida Statutes, allows unwed  
71 pregnant minors to make medical decisions relating to their  
72 pregnancies and allows them to consent to the performance of  
73 medical or surgical care of services for their children, except  
74 for decisions to terminate pregnancies, and

75 WHEREAS, the United States Supreme Court has determined  
76 that the constitutional rights of minors are not equal to the  
77 rights of adults because children are vulnerable and unable to  
78 make informed critical decisions and because of the unique role  
79 of parents in childrearing, and

80 WHEREAS, requiring parental consent for a minor to obtain  
81 an abortion will serve the interests of this state by protecting  
82 immature minors, preserving the family unit, and guarding the  
83 fundamental right of parents to raise their children, and

84 WHEREAS, the inclusion of provisions for a medical  
85 emergency exception to the consent requirement; the judicial  
86 waiver of consent process; the appointment of counsel for  
87 indigent minors; and procedural safeguards, including guidelines

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88 relating to admissible evidence and a required hearing within an  
89 extendable 3-day period after the filing of a petition for a  
90 judicial waiver of consent, are necessary to further the  
91 interests of this state, but accomplish this purpose by imposing  
92 the least restrictive means, NOW, THEREFORE,

93

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

95

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

98 390.01117 Parental consent for abortion.-

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

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

102 (a) "Consent" means a notarized written statement signed by  
103 a minor and either her mother, her father, or her legal guardian  
104 declaring that the minor is pregnant, intends to seek an  
105 abortion, and that her mother, father, or legal guardian, as  
106 applicable, consents to the abortion because the abortion is in  
107 the best interest of the minor.

108 (b) "Minor" means a person under the age of 18 years.

109 (3) CONSENT OF ONE PARENT OR GUARDIAN REQUIRED.-A physician  
110 may not perform an abortion on a minor unless the physician has  
111 been presented with consent as defined in this section.

112 (4) EXCEPTIONS.-Consent is not required under subsection  
113 (3) if the attending physician certifies in the minor's medical  
114 record that a medical emergency, as defined in s.  
115 390.01114(2)(d), exists and there is insufficient time to obtain  
116 consent or if consent is waived under subsection (6).

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117 (5) REPORTS.—

118 (a) A physician who has performed an abortion on a minor in  
119 the past calendar month shall submit a monthly report to the  
120 department which must include the following information for each  
121 minor upon whom an abortion was performed:

122 1. If the abortion was performed with consent;

123 2. If the abortion was performed during a medical emergency  
124 that excepted the minor from the consent requirement, and the  
125 nature of the medical emergency;

126 3. If the abortion was performed with a judicial waiver of  
127 consent;

128 4. Her age; and

129 5. The number of times she has been pregnant and the number  
130 of abortions that have been performed on her.

131 (b) The department shall adopt by rule a form to be used  
132 for such monthly reports. Patient names may not be included on  
133 the forms. The department shall prepare an annual compilation of  
134 the data reported and make it available to the public on the  
135 department website.

136 (6) PROCEDURE FOR JUDICIAL WAIVER OF CONSENT.—

137 (a) A minor may petition any circuit court in which the  
138 minor resides for a waiver of the consent required to obtain an  
139 abortion and may participate in proceedings on her own behalf.  
140 The petition must include a statement that the minor is pregnant  
141 and is unemancipated, that consent from a parent or the legal  
142 guardian of the minor has not been obtained, and that the minor  
143 wishes to obtain an abortion without first obtaining consent.  
144 The circuit court shall advise the minor that she has a right to  
145 court-appointed counsel and shall provide her with counsel upon

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146 her request. The court also may appoint a guardian ad litem for  
147 the minor. A guardian ad litem appointed under this subsection  
148 must maintain the confidentiality of the minor's identity.

149 (b) Court proceedings under this subsection shall be  
150 confidential and must ensure the anonymity of the minor. All  
151 court proceedings under this section shall be sealed. The minor  
152 may file her petition in the court using a pseudonym or using  
153 solely her initials. All documents related to this petition  
154 shall be confidential and may not be made available to the  
155 public. These proceedings shall be given precedence over other  
156 pending matters to the extent necessary to ensure that the court  
157 reaches a decision promptly. The court shall rule, and issue  
158 written findings of fact and conclusions of law, within 3  
159 business days after the petition is filed, except that the 3-  
160 business-day limitation may be extended at the request of the  
161 minor.

162 1. If the court fails to rule within the 3-business-day  
163 period and an extension has not been requested, the minor may  
164 immediately petition for a hearing upon the expiration of the 3-  
165 business-day period to the chief judge of the circuit, who must  
166 ensure that a hearing is held within 48 hours after receipt of  
167 the minor's petition and that an order is entered within 24  
168 hours after the hearing.

169 2. If the circuit court does not grant a judicial waiver of  
170 consent, the minor has the right to an appeal. An appellate  
171 court must rule within 7 days after receipt of the appeal, but a  
172 ruling may be remanded with further instruction, in which case a  
173 ruling must be made within 3 business days after the remand. The  
174 reason for overturning a ruling on appeal must be based on abuse

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175 of discretion by the court and may not be based on the weight of  
176 the evidence presented to the circuit court, since the  
177 proceeding is a nonadversarial proceeding.

178 (c) If the court finds, by clear and convincing evidence,  
179 that the minor is sufficiently mature to decide whether to  
180 terminate her pregnancy, the court shall issue an order  
181 authorizing the minor to obtain an abortion without the consent  
182 of a parent or guardian. If the court does not make the finding  
183 specified in this paragraph or paragraph (d), it must dismiss  
184 the petition. The court shall consider whether there may be any  
185 undue influence by another on the minor's decision to have an  
186 abortion and all of the following factors concerning the minor:

187 1. Age.

188 2. Overall intelligence.

189 3. Emotional development and stability.

190 4. Credibility and demeanor as a witness.

191 5. Ability to accept responsibility.

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

194 7. Ability to understand and explain the medical risks of  
195 terminating her pregnancy and to apply that understanding to her  
196 decision.

197 (d) If the court finds, by a preponderance of the evidence,  
198 that the petitioner is the victim of child abuse or sexual  
199 abuse, as those terms are defined in s. 390.01114(2), inflicted  
200 by one or both of her parents or her guardian, or finds, by  
201 clear and convincing evidence, that requiring the consent of a  
202 parent or guardian is not in the best interest of the  
203 petitioner, the court shall issue an order authorizing the minor

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204 to obtain an abortion without the consent of a parent or  
205 guardian. The best-interest standard does not include financial  
206 best interest or financial considerations or the potential  
207 financial impact on the minor or her family if she does not  
208 terminate the pregnancy. If the court finds evidence of child  
209 abuse or sexual abuse of the petitioner by any person, the court  
210 shall report the evidence of child abuse or sexual abuse of the  
211 petitioner, as provided in s. 39.201. If the court does not make  
212 the finding specified in this paragraph or paragraph (c), it  
213 must dismiss the petition.

214 (e) A court that conducts proceedings under this section  
215 shall:

216 1. Provide for a written transcript of all testimony and  
217 proceedings;

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

222 3. Order that a confidential record be maintained.

223 (f) All hearings under this section, including appeals,  
224 shall remain confidential and closed to the public, as provided  
225 by court rule.

226 (g) An expedited appeal shall be made available, as the  
227 Supreme Court provides by rule, to any minor to whom the circuit  
228 court denies a waiver of consent. An order authorizing an  
229 abortion without consent is not subject to appeal.

230 (h) Filing fees or court costs may not be required of any  
231 minor who petitions a court for a waiver of consent under this  
232 subsection at either the trial or the appellate level.



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

236 (7) RULEMAKING.—The Supreme Court is requested to adopt  
237 rules and forms for petitions to ensure that proceedings under  
238 subsection (6) are handled expeditiously and in a manner  
239 consistent with this section. The Supreme Court is also  
240 requested to adopt rules to ensure that the hearings protect the  
241 confidentiality of the minor's identity and the confidentiality  
242 of the proceedings.

243 (8) CRIMINAL PENALTIES AND CIVIL REMEDIES.—

244 (a) Any person who willfully and intentionally performs an  
245 abortion with knowledge that or with reckless disregard as to  
246 whether the minor upon whom the abortion is to be performed is  
247 unemancipated without obtaining the required consent commits a  
248 misdemeanor of the first degree, punishable as provided in s.  
249 775.082 or s. 775.083. It is a defense to prosecution under this  
250 section that the minor falsely represented her age or identity  
251 to the physician to be at least 18 years of age by displaying an  
252 apparently valid governmental record of identification such that  
253 a careful and prudent person under similar circumstances would  
254 have relied on the representation. The defense does not apply if  
255 the physician is shown to have had independent knowledge of the  
256 minor's actual age or identity or failed to use due diligence in  
257 determining her age or identity.

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

261 (c) Failure to obtain consent from a person from whom

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262 consent is required under this section is prima facie evidence  
263 of failure to obtain consent and of interference with family  
264 relations in appropriate civil actions. Such prima facie  
265 evidence does not apply to any issue other than failure to  
266 obtain consent from the parent or legal guardian and  
267 interference with family relations in appropriate civil actions.  
268 The civil action may be based on a claim that the act was a  
269 result of negligence, gross negligence, wantonness, willfulness,  
270 intention, or other legal standard of care. Exemplary damages  
271 may be awarded in appropriate civil actions relevant to  
272 violations of this section.

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

276 (9) CONSTRUCTION.-

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

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

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

283 (10) 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

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291 circumstances.

292 Section 2. This act shall take effect July 1, 2019.