

By the Committee on Health Care Services and Representatives Brooks, Burroughs, Albright, Littlefield, Wise, Starks, Bronson, Posey, Peaden, Maygarden, Fasano, Byrd, Sindler, Melvin, Trovillion, Wallace, Bainter, Ball, Kelly, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to informed consent; creating
3 the "Woman's Right-To-Know-Act; amending and
4 renumbering s. 390.001, F.S.; requiring the
5 voluntary and informed consent of a woman upon
6 whom a termination of pregnancy is to be
7 performed or induced; providing requirements of
8 informed consent; providing that a physician
9 provide certain information; requiring written
10 acknowledgment that the pregnant woman has been
11 provided with certain information; providing
12 requirements relating to an emergency
13 procedure; providing penalties; limiting the
14 civil liability of a physician who complies
15 with this section; amending and renumbering s.
16 390.002, F.S.; conforming references to the
17 Department of Health; amending s. 390.011,
18 F.S.; expanding scope and revising definitions;
19 amending ss. 390.012, 390.014, 390.015,
20 390.016, 390.017, 390.018, 390.019, and
21 390.021, F.S.; conforming references to the
22 department, the Agency for Health Care
23 Administration, and the chapter; providing an
24 effective date.

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

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28 Section 1. This act may be cited as the "Woman's
29 Right-To-Know Act."

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1 Section 2. Section 390.001, Florida Statutes, is
2 renumbered as section 390.0111, Florida Statutes, and amended
3 to read:

4 390.0111 ~~390.001~~ Termination of pregnancies.--

5 ~~(1) DEFINITIONS.--As used in this section, unless the~~
6 ~~context clearly requires otherwise:~~

7 ~~(a) "Physician" means a doctor of medicine or~~
8 ~~osteopathic medicine licensed by the state under chapter 458~~
9 ~~or chapter 459 or a physician practicing medicine or~~
10 ~~osteopathic medicine in the employment of the United States or~~
11 ~~this state.~~

12 ~~(b) "Approved facility" means:~~

13 ~~1. A hospital licensed by the state; or~~

14 ~~2. A medical facility licensed by the Department of~~
15 ~~Health and Rehabilitative Services pursuant to rules adopted~~
16 ~~for that purpose, provided such rules shall require regular~~
17 ~~evaluation and review procedures.~~

18 ~~(1)(2)~~ TERMINATION IN THIRD ~~LAST~~ TRIMESTER; WHEN
19 ALLOWED.--No termination of pregnancy shall be performed on
20 any human being in the third ~~last~~ trimester of pregnancy
21 unless:

22 (a) Two physicians certify in writing to the fact
23 that, to a reasonable degree of medical probability, the
24 termination of pregnancy is necessary to save the life or
25 preserve the health of the pregnant woman; or

26 (b) The physician certifies in writing to the medical
27 necessity for legitimate emergency medical procedures for
28 termination of pregnancy in the last trimester, and another
29 physician is not available for consultation.

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1 ~~(2)(3)~~ PERFORMANCE BY PHYSICIAN REQUIRED.--No
2 termination of pregnancy shall be performed at any time except
3 by a physician as defined in this section.

4 ~~(3)(4)~~ CONSENTS REQUIRED.--A termination of pregnancy
5 may not be performed or induced except with the voluntary and
6 informed written ~~Prior to terminating a pregnancy, the~~
7 ~~physician shall obtain the written informed~~ consent of the
8 pregnant woman or, in the case of a mental incompetent, the
9 voluntary and informed written consent of her court-appointed
10 guardian.

11 (a) Except in the case of a medical emergency, consent
12 to a termination of pregnancy is voluntary and informed only
13 if:

14 1. The physician who is to perform the procedure, or
15 the referring physician, has, at a minimum, orally, in person,
16 informed the woman of:

17 a. The nature and risks of undergoing or not
18 undergoing the proposed procedure that a reasonable patient
19 would consider material to making a knowing and willful
20 decision of whether to terminate a pregnancy.

21 b. The probable gestational age of the fetus at the
22 time the termination of pregnancy is to be performed.

23 c. The medical risks to the woman and fetus of
24 carrying the pregnancy to term.

25 2. Printed materials prepared and provided by the
26 department have been provided to the pregnant woman, if she
27 chooses to view these materials, including:

28 a. A description of the fetus.

29 b. A list of agencies that offer alternatives to
30 terminating the pregnancy.

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1 c. Detailed information on the availability of medical
2 assistance benefits for prenatal care, childbirth, and
3 neonatal care.

4 3. The woman acknowledges in writing, before the
5 termination of pregnancy, that the information required to be
6 provided under this subsection has been provided.

7
8 Nothing in this paragraph is intended to prohibit a physician
9 from providing any additional information which the physician
10 deems material to the woman's informed decision to terminate
11 her pregnancy.

12 ~~(a) If the woman is married, the husband shall be~~
13 ~~given notice of the proposed termination of pregnancy and an~~
14 ~~opportunity to consult with the wife concerning the procedure.~~
15 ~~The physician may rely on a written statement of the wife that~~
16 ~~such notice and opportunity have been given, or he or she may~~
17 ~~rely on the written consent of the husband to the proposed~~
18 ~~termination of pregnancy. If the husband and wife are~~
19 ~~separated or estranged, the provisions of this paragraph for~~
20 ~~notice or consent shall not be required. The physician may~~
21 ~~rely upon a written statement from the wife that the husband~~
22 ~~is voluntarily living apart or estranged from her.~~

23 (b) In the event a medical emergency exists and the
24 above requirements with respect to informed consent have not
25 been complied with, a physician may terminate a pregnancy if
26 he or she has informed the woman, before the procedure, if
27 possible, of the medical indications supporting his or her
28 judgment that the procedure is necessary to avert her death
29 and has obtained at least one corroborative medical opinion
30 attesting to the medical necessity of the procedure for
31 emergency medical procedures and to the fact that to a

1 ~~reasonable degree of medical certainty the continuation of the~~
2 ~~pregnancy would threaten the life of the pregnant woman.~~

3 (c) Any physician who performs or induces a
4 termination of pregnancy without first obtaining informed
5 consent as required by this subsection, or with knowledge or
6 reason to know that the informed consent of the woman has not
7 been obtained commits a third degree misdemeanor, punishable
8 as provided in s. 775.082 or s. 775.083. For each subsequent
9 offense, the physician commits a second degree misdemeanor,
10 punishable as provided in s. 775.082 or s. 775.083. Violation
11 of this subsection by a physician constitutes grounds for
12 disciplinary action under s. 458.331 or s. 459.015. A
13 physician is not in violation of this subsection for failure
14 to furnish the printed materials required if the physician can
15 demonstrate, by a preponderance of evidence, that the
16 physician reasonably believed that furnishing the information
17 would have a severely adverse effect on the physical or mental
18 health of the patient.

19 (d) A physician who complies with this subsection
20 shall not be civilly liable to his or her patient for failure
21 to obtain informed consent to the termination of pregnancy.

22 ~~(4)~~~~(5)~~ STANDARD OF MEDICAL CARE TO BE USED DURING
23 VIABILITY.--If a termination of pregnancy is performed during
24 viability, no person who performs or induces the termination
25 of pregnancy shall fail to use that degree of professional
26 skill, care, and diligence to preserve the life and health of
27 the fetus which such person would be required to exercise in
28 order to preserve the life and health of any fetus intended to
29 be born and not aborted. "Viability" means that stage of fetal
30 development when the life of the unborn child may with a
31 reasonable degree of medical probability be continued

1 indefinitely outside the womb. Notwithstanding the provisions
2 of this subsection, the woman's life and health shall
3 constitute an overriding and superior consideration to the
4 concern for the life and health of the fetus when such
5 concerns are in conflict.

6 (5)~~(6)~~ EXPERIMENTATION ON FETUS PROHIBITED;
7 EXCEPTION.--No person shall use any live fetus or live,
8 premature infant for any type of scientific, research,
9 laboratory, or other kind of experimentation either prior to
10 or subsequent to any termination of pregnancy procedure except
11 as necessary to protect or preserve the life and health of
12 such fetus or premature infant.

13 (6)~~(7)~~ FETAL REMAINS.--Fetal remains shall be disposed
14 of in a sanitary and appropriate manner and in accordance with
15 standard health practices, as provided by rule of the
16 department ~~of Health and Rehabilitative Services~~. Failure to
17 dispose of fetal remains in accordance with department rules
18 is a misdemeanor of the second degree, punishable as provided
19 in s. 775.082 or s. 775.083.

20 (7)~~(8)~~ REFUSAL TO PARTICIPATE IN TERMINATION
21 PROCEDURE.--Nothing in this section shall require any hospital
22 or any person to participate in the termination of a
23 pregnancy, nor shall any hospital or any person be liable for
24 such refusal. No person who is a member of, or associated
25 with, the staff of a hospital, nor any employee of a hospital
26 or physician in which or by whom the termination of a
27 pregnancy has been authorized or performed, who shall state an
28 objection to such procedure on moral or religious grounds
29 shall be required to participate in the procedure which will
30 result in the termination of pregnancy. The refusal of any
31 such person or employee to participate shall not form the

1 basis for any disciplinary or other recriminatory action
2 against such person.

3 (8)~~(9)~~ EXCEPTION.--The provisions of this section
4 shall not apply to the performance of a procedure which
5 terminates a pregnancy in order to deliver a live child.

6 (9)~~(10)~~ PENALTIES FOR VIOLATION.--Except as provided
7 in subsections (3) and (6):

8 (a) Any person who willfully performs, or actively
9 participates in, a termination of a pregnancy procedure in
10 violation of the requirements of this section commits is
11 ~~guilty of~~ a felony of the third degree, punishable as provided
12 in s. 775.082, s. 775.083, or s. 775.084.

13 (b) Any person who performs, or actively participates
14 in, a termination of a pregnancy procedure in violation of the
15 provisions of this section which results in the death of the
16 woman commits is ~~guilty of~~ a felony of the second degree,
17 punishable as provided in s. 775.082, s. 775.083, or s.
18 775.084.

19 Section 3. Section 390.002, Florida Statutes, 1996
20 Supplement, is renumbered as section 390.0112, Florida
21 Statutes, and subsections (1) and (4) of said section are
22 amended, to read:

23 390.0112 ~~390.002~~ Termination of pregnancies;
24 reporting.--

25 (1) The director of any medical facility in which any
26 pregnancy is terminated shall submit a monthly report which
27 contains the number of procedures performed, the reason for
28 same, and the period of gestation at the time such procedures
29 were performed to the department ~~of Health and Rehabilitative~~
30 ~~Services~~. The department shall be responsible for keeping such
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1 reports in a central place from which statistical data and
2 analysis can be made.

3 (4) Any person required under this section to file a
4 report or keep any records who willfully fails to file such
5 report or keep such records may be subject to a \$200 fine for
6 each violation. The department of ~~Health and Rehabilitative~~
7 ~~Services~~ shall be required to impose such fines when reports
8 or records required under this section have not been timely
9 received. For purposes of this section, timely received is
10 defined as 30 days following the preceding month.

11 Section 4. Section 390.011, Florida Statutes, is
12 amended to read:

13 390.011 Definitions.--As used in this chapter, the
14 term act:

15 (1) "Abortion" means the termination of human
16 pregnancy with an intention other than to produce a live birth
17 or to remove a dead fetus.

18 (2) "Abortion clinic" or "clinic" means any facility
19 in which abortions are performed. The term does not include:
20 ~~other than~~

21 (a) A hospital; or

22 (b) A physician's office, provided that the office
23 ~~which~~ is not used primarily for the performance of abortions.

24 (3) "Agency" means the Agency for Health Care
25 Administration.

26 (4)~~(3)~~ "Department" means the Department of Health ~~and~~
27 ~~Rehabilitative Services.~~

28 (5)~~(4)~~ "Hospital" means a facility licensed under
29 chapter 395.

30 (6)~~(5)~~ "Physician" means a physician licensed under
31 chapter 458 or chapter 459 or a physician practicing medicine

1 or osteopathy in the employment of the United States ~~or this~~
2 ~~state.~~

3 (7)~~(6)~~ "Third trimester" means the weeks of pregnancy
4 after the 24th week of pregnancy.

5 Section 5. Subsections (1) and (2) of section 390.012,
6 Florida Statutes, are amended to read:

7 390.012 Powers of agency ~~department~~; rules; disposal
8 of fetal remains.--

9 (1) The agency ~~department~~ shall have the authority to
10 develop and enforce rules for the health, care, and treatment
11 of persons in abortion clinics and for the safe operation of
12 such clinics. These rules shall be comparable to rules which
13 apply to all surgical procedures requiring approximately the
14 same degree of skill and care as the performance of first
15 trimester abortions. The rules shall be reasonably related to
16 the preservation of maternal health of the clients. The rules
17 shall not impose a legally significant burden on a woman's
18 freedom to decide whether to terminate her pregnancy. The
19 rules shall provide for:

20 (a) The performance of pregnancy termination
21 procedures only by a licensed physician.

22 (b) The making, protection, and preservation of
23 patient records, which shall be treated as medical records
24 under chapter 458.

25 (2) The agency ~~department~~ may adopt and enforce rules,
26 in the interest of protecting the public health, to ensure the
27 prompt and proper disposal of fetal remains and tissue
28 resulting from pregnancy termination.

29 Section 6. Subsection (1) of section 390.014, Florida
30 Statutes, is amended to read:

31 390.014 Licenses; fees, display, etc.--

1 (1) No abortion clinic shall operate in this state
2 without a currently effective license issued by the agency
3 ~~Department of Health and Rehabilitative Services.~~

4 Section 7. Subsection (1) of section 390.015, Florida
5 Statutes, is amended to read:

6 390.015 Application for license.--

7 (1) An application for a license to operate an
8 abortion clinic shall be made to the agency ~~department~~ on a
9 form furnished by it for that purpose. The application shall
10 be accompanied by the applicable license fee.

11 Section 8. Section 390.016, Florida Statutes, is
12 amended to read:

13 390.016 Expiration of license; renewal.--

14 (1) A license issued for the operation of an abortion
15 clinic, unless sooner suspended or revoked, shall expire 1
16 year from the date of issuance. Sixty days prior to the
17 expiration date, an application for renewal of such license
18 shall be submitted to the agency ~~department~~ on a form
19 furnished by the agency ~~department~~. The license may be
20 renewed if the applicant has met the requirements of this
21 chapter ~~act~~ and of all rules adopted pursuant to this chapter
22 ~~act~~.

23 (2) A licensee against which a revocation or
24 suspension proceeding is pending at the time of license
25 renewal may be issued a conditional license which shall be
26 effective until final disposition of the proceeding by the
27 agency ~~department~~. If judicial relief is sought from the
28 order resulting from the revocation or suspension proceeding,
29 the court having jurisdiction may order that the conditional
30 license be continued for the duration of the judicial
31 proceeding.

1 Section 9. Section 390.017, Florida Statutes, is
2 amended to read:

3 390.017 Grounds for suspension or revocation of
4 license.--The license of an abortion clinic may be revoked, or
5 may be suspended for a period not to exceed 2 years, or the
6 agency ~~department~~ may refuse to renew such license, if it is
7 determined in accordance with the provisions of chapter 120
8 that the clinic has violated a provision of this chapter act
9 or any rule or lawful order of the agency ~~department~~.

10 Section 10. Section 390.018, Florida Statutes, is
11 amended to read:

12 390.018 Administrative penalty in lieu of revocation
13 or suspension.--If the agency ~~department~~ finds that one or
14 more grounds exist for the revocation or suspension of a
15 license issued to an abortion clinic, the agency ~~department~~
16 may, in lieu of such suspension or revocation, impose a fine
17 upon the clinic in an amount not to exceed \$1,000 for each
18 violation. The fine shall be paid to the agency ~~department~~
19 within 60 days from the date of entry of the administrative
20 order. If the licensee fails to pay the fine in its entirety
21 to the agency ~~department~~ within the period allowed, the
22 license of the licensee shall stand suspended, revoked, or
23 renewal or continuation may be refused, as the case may be,
24 upon expiration of such period and without any further
25 administrative or judicial proceedings.

26 Section 11. Section 390.019, Florida Statutes, is
27 amended to read:

28 390.019 Inspections; investigations.--The agency
29 ~~department~~ shall make or shall cause to be made an inspection
30 of an abortion clinic prior to licensing such clinic, and it
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1 shall make such additional inspections and investigations as
2 may be necessary to assure compliance with this chapter act.
3 Section 12. Section 390.021, Florida Statutes, is
4 amended to read:
5 390.021 Injunction.--In addition to the other powers
6 provided by this chapter act, the agency ~~department~~ may
7 institute injunction proceedings in a court of competent
8 jurisdiction to restrain or prevent the establishment or
9 operation of an abortion clinic which does not have a license
10 or is in violation of any provision of this chapter act or of
11 any rules adopted pursuant to this chapter act.
12 Section 13. This act shall take effect July 1, 1997.

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17 ADDITIONAL SPONSORS

18 Lacasa, Diaz de la Portilla, Flanagan, Smith, Mackey,
19 Constantine, Fuller, Feeney, Livingston, Goode,
20 Rodriguez-Chomat, Thrasher, Harrington, Sanderson, Putnam,
21 Arnall, Andrews, Minton, Ziebarth, Dockery, Murman, Sublette
22 and Morse
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