

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 for disciplinary actions;
14 providing a defense; amending and renumbering
15 s. 390.002, F.S.; conforming references to the
16 Department of Health; amending s. 390.011,
17 F.S.; expanding scope and revising definitions;
18 amending ss. 390.012, 390.014, 390.015,
19 390.016, 390.017, 390.018, 390.019, and
20 390.021, F.S.; conforming references to the
21 department, the Agency for Health Care
22 Administration, and the chapter; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. This act may be cited as the "Woman's
28 Right-To-Know Act."

29 Section 2. Section 390.001, Florida Statutes, is
30 renumbered as section 390.0111, Florida Statutes, and amended
31 to read:

1 390.0111 ~~390.001~~ Termination of pregnancies.--
2 ~~(1) DEFINITIONS.--As used in this section, unless the~~
3 ~~context clearly requires otherwise:~~
4 ~~(a) "Physician" means a doctor of medicine or~~
5 ~~osteopathic medicine licensed by the state under chapter 458~~
6 ~~or chapter 459 or a physician practicing medicine or~~
7 ~~osteopathic medicine in the employment of the United States or~~
8 ~~this state.~~
9 ~~(b) "Approved facility" means:~~
10 ~~1. A hospital licensed by the state; or~~
11 ~~2. A medical facility licensed by the Department of~~
12 ~~Health and Rehabilitative Services pursuant to rules adopted~~
13 ~~for that purpose, provided such rules shall require regular~~
14 ~~evaluation and review procedures.~~
15 ~~(1)(2)~~ TERMINATION IN THIRD LAST TRIMESTER; WHEN
16 ALLOWED.--No termination of pregnancy shall be performed on
17 any human being in the third last trimester of pregnancy
18 unless:
19 (a) Two physicians certify in writing to the fact
20 that, to a reasonable degree of medical probability, the
21 termination of pregnancy is necessary to save the life or
22 preserve the health of the pregnant woman; or
23 (b) The physician certifies in writing to the medical
24 necessity for legitimate emergency medical procedures for
25 termination of pregnancy in the last trimester, and another
26 physician is not available for consultation.
27 ~~(2)(3)~~ PERFORMANCE BY PHYSICIAN REQUIRED.--No
28 termination of pregnancy shall be performed at any time except
29 by a physician as defined in this section.
30 ~~(3)(4)~~ CONSENTS REQUIRED.--A termination of pregnancy
31 may not be performed or induced except with the voluntary and

1 informed written ~~Prior to terminating a pregnancy, the~~
2 ~~physician shall obtain the written informed~~ consent of the
3 pregnant woman or, in the case of a mental incompetent, the
4 voluntary and informed written consent of her court-appointed
5 guardian.

6 (a) Except in the case of a medical emergency, consent
7 to a termination of pregnancy is voluntary and informed only
8 if:

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

12 a. The nature and risks of undergoing or not
13 undergoing the proposed procedure that a reasonable patient
14 would consider material to making a knowing and willful
15 decision of whether to terminate a pregnancy.

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

18 c. The medical risks to the woman and fetus of
19 carrying the pregnancy to term.

20 2. Printed materials prepared and provided by the
21 department have been provided to the pregnant woman, if she
22 chooses to view these materials, including:

23 a. A description of the fetus.

24 b. A list of agencies that offer alternatives to
25 terminating the pregnancy.

26 c. Detailed information on the availability of medical
27 assistance benefits for prenatal care, childbirth, and
28 neonatal care.

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

1
2 Nothing in this paragraph is intended to prohibit a physician
3 from providing any additional information which the physician
4 deems material to the woman's informed decision to terminate
5 her pregnancy.

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

17 (b) In the event a medical emergency exists and a
18 physician cannot comply with the requirements for informed
19 consent the above requirements have not been complied with, a
20 physician may terminate a pregnancy if he or she has obtained
21 at least one corroborative medical opinion attesting to the
22 medical necessity for emergency medical procedures and to the
23 fact that to a reasonable degree of medical certainty the
24 continuation of the pregnancy would threaten the life of the
25 pregnant woman. In the event no second physician is available
26 for a corroborating opinion, the physician may proceed but
27 shall be document reasons for the medical necessity in the
28 patient's medical records.

29 (c) Violation of this subsection by a physician
30 constitutes grounds for disciplinary action under s. 458.331
31 or s. 459.015. Substantial compliance or reasonable belief

1 that complying with the requirements of informed consent would
2 threaten the life or health of the patient is a defense to any
3 action brought under this paragraph.

4 (4)(5) STANDARD OF MEDICAL CARE TO BE USED DURING
5 VIABILITY.--If a termination of pregnancy is performed during
6 viability, no person who performs or induces the termination
7 of pregnancy shall fail to use that degree of professional
8 skill, care, and diligence to preserve the life and health of
9 the fetus which such person would be required to exercise in
10 order to preserve the life and health of any fetus intended to
11 be born and not aborted. "Viability" means that stage of fetal
12 development when the life of the unborn child may with a
13 reasonable degree of medical probability be continued
14 indefinitely outside the womb. Notwithstanding the provisions
15 of this subsection, the woman's life and health shall
16 constitute an overriding and superior consideration to the
17 concern for the life and health of the fetus when such
18 concerns are in conflict.

19 (5)(6) EXPERIMENTATION ON FETUS PROHIBITED;
20 EXCEPTION.--No person shall use any live fetus or live,
21 premature infant for any type of scientific, research,
22 laboratory, or other kind of experimentation either prior to
23 or subsequent to any termination of pregnancy procedure except
24 as necessary to protect or preserve the life and health of
25 such fetus or premature infant.

26 (6)(7) FETAL REMAINS.--Fetal remains shall be disposed
27 of in a sanitary and appropriate manner and in accordance with
28 standard health practices, as provided by rule of the
29 department of ~~Health and Rehabilitative Services~~. Failure to
30 dispose of fetal remains in accordance with department rules
31

1 is a misdemeanor of the second degree, punishable as provided
2 in s. 775.082 or s. 775.083.

3 (7)~~(8)~~ REFUSAL TO PARTICIPATE IN TERMINATION

4 PROCEDURE.--Nothing in this section shall require any hospital
5 or any person to participate in the termination of a
6 pregnancy, nor shall any hospital or any person be liable for
7 such refusal. No person who is a member of, or associated
8 with, the staff of a hospital, nor any employee of a hospital
9 or physician in which or by whom the termination of a
10 pregnancy has been authorized or performed, who shall state an
11 objection to such procedure on moral or religious grounds
12 shall be required to participate in the procedure which will
13 result in the termination of pregnancy. The refusal of any
14 such person or employee to participate shall not form the
15 basis for any disciplinary or other recriminatory action
16 against such person.

17 (8)~~(9)~~ EXCEPTION.--The provisions of this section

18 shall not apply to the performance of a procedure which
19 terminates a pregnancy in order to deliver a live child.

20 (9)~~(10)~~ PENALTIES FOR VIOLATION.--Except as provided
21 in subsections (3) and (6):

22 (a) Any person who willfully performs, or actively
23 participates in, a termination of a pregnancy procedure in
24 violation of the requirements of this section commits is
25 ~~guilty of~~ a felony of the third degree, punishable as provided
26 in s. 775.082, s. 775.083, or s. 775.084.

27 (b) Any person who performs, or actively participates
28 in, a termination of a pregnancy procedure in violation of the
29 provisions of this section which results in the death of the
30 woman commits is ~~guilty of~~ a felony of the second degree,
31

1 punishable as provided in s. 775.082, s. 775.083, or s.
2 775.084.

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

7 390.0112 ~~390.002~~ Termination of pregnancies;
8 reporting.--

9 (1) The director of any medical facility in which any
10 pregnancy is terminated shall submit a monthly report which
11 contains the number of procedures performed, the reason for
12 same, and the period of gestation at the time such procedures
13 were performed to the department of ~~Health and Rehabilitative~~
14 ~~Services~~. The department shall be responsible for keeping such
15 reports in a central place from which statistical data and
16 analysis can be made.

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

25 Section 4. Section 390.011, Florida Statutes, is
26 amended to read:

27 390.011 Definitions.--As used in this chapter, the
28 term ~~act~~:

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

1 (2) "Abortion clinic" or "clinic" means any facility
2 in which abortions are performed. The term does not include:

3 ~~other than~~

4 (a) A hospital; or

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

7 (3) "Agency" means the Agency for Health Care
8 Administration.

9 (4)~~(3)~~ "Department" means the Department of Health ~~and~~
10 ~~Rehabilitative Services.~~

11 (5)~~(4)~~ "Hospital" means a facility licensed under
12 chapter 395.

13 (6)~~(5)~~ "Physician" means a physician licensed under
14 chapter 458 or chapter 459 or a physician practicing medicine
15 or osteopathy in the employment of the United States ~~or this~~
16 ~~state.~~

17 (7)~~(6)~~ "Third trimester" means the weeks of pregnancy
18 after the 24th week of pregnancy.

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

21 390.012 Powers of agency ~~department~~; rules; disposal
22 of fetal remains.--

23 (1) The agency ~~department~~ shall have the authority to
24 develop and enforce rules for the health, care, and treatment
25 of persons in abortion clinics and for the safe operation of
26 such clinics. Rules prepared by the agency shall include input
27 from advocates representing both sides of the termination of
28 pregnancy issue. These rules shall be comparable to rules
29 which apply to all surgical procedures requiring approximately
30 the same degree of skill and care as the performance of first
31 trimester abortions. The rules shall be reasonably related to

1 the preservation of maternal health of the clients. The rules
2 shall not impose a legally significant burden on a woman's
3 freedom to decide whether to terminate her pregnancy. The
4 rules shall provide for:

5 (a) The performance of pregnancy termination
6 procedures only by a licensed physician.

7 (b) The making, protection, and preservation of
8 patient records, which shall be treated as medical records
9 under chapter 458.

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

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

16 390.014 Licenses; fees, display, etc.--

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

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

22 390.015 Application for license.--

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

27 Section 8. Section 390.016, Florida Statutes, is
28 amended to read:

29 390.016 Expiration of license; renewal.--

30 (1) A license issued for the operation of an abortion
31 clinic, unless sooner suspended or revoked, shall expire 1

1 year from the date of issuance. Sixty days prior to the
2 expiration date, an application for renewal of such license
3 shall be submitted to the agency ~~department~~ on a form
4 furnished by the agency ~~department~~. The license may be
5 renewed if the applicant has met the requirements of this
6 chapter ~~act~~ and of all rules adopted pursuant to this chapter
7 ~~act~~.

8 (2) A licensee against which a revocation or
9 suspension proceeding is pending at the time of license
10 renewal may be issued a conditional license which shall be
11 effective until final disposition of the proceeding by the
12 agency ~~department~~. If judicial relief is sought from the
13 order resulting from the revocation or suspension proceeding,
14 the court having jurisdiction may order that the conditional
15 license be continued for the duration of the judicial
16 proceeding.

17 Section 9. Section 390.017, Florida Statutes, is
18 amended to read:

19 390.017 Grounds for suspension or revocation of
20 license.--The license of an abortion clinic may be revoked, or
21 may be suspended for a period not to exceed 2 years, or the
22 agency ~~department~~ may refuse to renew such license, if it is
23 determined in accordance with the provisions of chapter 120
24 that the clinic has violated a provision of this chapter ~~act~~
25 or any rule or lawful order of the agency ~~department~~.

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

28 390.018 Administrative penalty in lieu of revocation
29 or suspension.--If the agency ~~department~~ finds that one or
30 more grounds exist for the revocation or suspension of a
31 license issued to an abortion clinic, the agency ~~department~~

1 may, in lieu of such suspension or revocation, impose a fine
2 upon the clinic in an amount not to exceed \$1,000 for each
3 violation. The fine shall be paid to the agency department
4 within 60 days from the date of entry of the administrative
5 order. If the licensee fails to pay the fine in its entirety
6 to the agency department within the period allowed, the
7 license of the licensee shall stand suspended, revoked, or
8 renewal or continuation may be refused, as the case may be,
9 upon expiration of such period and without any further
10 administrative or judicial proceedings.

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

13 390.019 Inspections; investigations.--The agency
14 ~~department~~ shall make or shall cause to be made an inspection
15 of an abortion clinic prior to licensing such clinic, and it
16 shall make such additional inspections and investigations as
17 may be necessary to assure compliance with this chapter act.

18 Section 12. Section 390.021, Florida Statutes, is
19 amended to read:

20 390.021 Injunction.--In addition to the other powers
21 provided by this chapter act, the agency department may
22 institute injunction proceedings in a court of competent
23 jurisdiction to restrain or prevent the establishment or
24 operation of an abortion clinic which does not have a license
25 or is in violation of any provision of this chapter act or of
26 any rules adopted pursuant to this chapter act.

27 Section 13. This act shall take effect July 1, 1997.
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