

By Representatives Ball, Burroughs, Arnold, Dockery, Peadar, Brooks, Healey, Westbrook, Bronson, Bainter, Starks, Lacasa, Trovillion, Fasano, Kelly, Sindler, Bitner, Feeney, Putnam, Futch, Wise, Fuller, Harrington, Posey, Littlefield, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
 2 An act relating to termination of pregnancies;
 3 amending s. 390.011, F.S.; defining
 4 "partial-birth abortion"; amending s. 390.001,
 5 F.S.; prohibiting partial-birth abortion;
 6 providing a penalty; providing civil liability;
 7 providing for relief; providing an effective
 8 date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Present subsections (5) and (6) of section
 13 390.011, Florida Statutes, are renumbered as subsections (6)
 14 and (7), respectively, and a new subsection (5) is added to
 15 said section, to read:

16 (5) "Partial-birth abortion" means a termination of
 17 pregnancy in which the physician performing the termination of
 18 pregnancy partially vaginally delivers a living fetus before
 19 killing the fetus and completing the delivery.

20 Section 2. Section 390.001, Florida Statutes, is
 21 amended to read:

22 390.001 Termination of pregnancies.--

23 (1) DEFINITIONS.--As used in this section, unless the
 24 context clearly requires otherwise:

25 (a) "Physician" means a doctor of medicine or
 26 osteopathic medicine licensed by the state under chapter 458
 27 or chapter 459 or a physician practicing medicine or
 28 osteopathic medicine in the employment of the United States or
 29 this state.

30 (b) "Approved facility" means:

31 1. A hospital licensed by the state; or

1 2. A medical facility licensed by the Agency for
2 Health Care Administration ~~Department of Health and~~
3 ~~Rehabilitative Services~~ pursuant to rules adopted for that
4 purpose, provided such rules shall require regular evaluation
5 and review procedures.

6 (c) "Partial-birth abortion" means a termination of
7 pregnancy in which the physician performing the termination of
8 pregnancy partially vaginally delivers a living fetus before
9 killing the fetus and completing the delivery.

10 (2) TERMINATION IN LAST TRIMESTER; WHEN ALLOWED.--No
11 termination of pregnancy shall be performed on any human being
12 in the last trimester of pregnancy unless:

13 (a) Two physicians certify in writing to the fact
14 that, to a reasonable degree of medical probability, the
15 termination of pregnancy is necessary to save the life or
16 preserve the health of the pregnant woman; or

17 (b) The physician certifies in writing to the medical
18 necessity for legitimate emergency medical procedures for
19 termination of pregnancy in the last trimester, and another
20 physician is not available for consultation.

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

24 (4) CONSENTS REQUIRED.--Prior to terminating a
25 pregnancy, the physician shall obtain the written informed
26 consent of the pregnant woman or, in the case of a mental
27 incompetent, the written consent of her court-appointed
28 guardian.

29 (a) If the woman is married, the husband shall be
30 given notice of the proposed termination of pregnancy and an
31 opportunity to consult with the wife concerning the procedure.

1 The physician may rely on a written statement of the wife that
2 such notice and opportunity have been given, or he or she may
3 rely on the written consent of the husband to the proposed
4 termination of pregnancy. If the husband and wife are
5 separated or estranged, the provisions of this paragraph for
6 notice or consent shall not be required. The physician may
7 rely upon a written statement from the wife that the husband
8 is voluntarily living apart or estranged from her.

9 (b) In the event a medical emergency exists and the
10 above requirements have not been complied with, a physician
11 may terminate a pregnancy if he or she has obtained at least
12 one corroborative medical opinion attesting to the medical
13 necessity for emergency medical procedures and to the fact
14 that to a reasonable degree of medical certainty the
15 continuation of the pregnancy would threaten the life of the
16 pregnant woman.

17 (5) STANDARD OF MEDICAL CARE TO BE USED DURING
18 VIABILITY.--If a termination of pregnancy is performed during
19 viability, no person who performs or induces the termination
20 of pregnancy shall fail to use that degree of professional
21 skill, care, and diligence to preserve the life and health of
22 the fetus which such person would be required to exercise in
23 order to preserve the life and health of any fetus intended to
24 be born and not aborted. "Viability" means that stage of fetal
25 development when the life of the unborn child may with a
26 reasonable degree of medical probability be continued
27 indefinitely outside the womb. Notwithstanding the provisions
28 of this subsection, the woman's life and health shall
29 constitute an overriding and superior consideration to the
30 concern for the life and health of the fetus when such
31 concerns are in conflict.

1 (6) PARTIAL-BIRTH ABORTION PROHIBITED; EXCEPTION.--
2 (a) No physician shall knowingly perform a
3 partial-birth abortion as defined in this section.
4 (b) A woman upon whom a partial-birth abortion is
5 performed may not be prosecuted under this section for a
6 conspiracy to violate the provisions of this section.
7 (c) This subsection shall not apply to a partial-birth
8 abortion that is necessary to save the life of a mother whose
9 life is endangered by a physical disorder, illness, or injury,
10 provided that no other medical procedure would suffice for
11 that purpose.
12 (7)(6) EXPERIMENTATION ON FETUS PROHIBITED;
13 EXCEPTION.--No person shall use any live fetus or live,
14 premature infant for any type of scientific, research,
15 laboratory, or other kind of experimentation either prior to
16 or subsequent to any termination of pregnancy procedure except
17 as necessary to protect or preserve the life and health of
18 such fetus or premature infant.
19 (8)(7) FETAL REMAINS.--Fetal remains shall be disposed
20 of in a sanitary and appropriate manner and in accordance with
21 standard health practices, as provided by rule of the
22 Department of Health ~~Department of Health and Rehabilitative~~
23 Services. Failure to dispose of fetal remains in accordance
24 with department rules is a misdemeanor of the second degree,
25 punishable as provided in s. 775.082 or s. 775.083.
26 (9)(8) REFUSAL TO PARTICIPATE IN TERMINATION
27 PROCEDURE.--Nothing in this section shall require any hospital
28 or any person to participate in the termination of a
29 pregnancy, nor shall any hospital or any person be liable for
30 such refusal. No person who is a member of, or associated
31 with, the staff of a hospital, nor any employee of a hospital

1 or physician in which or by whom the termination of a
2 pregnancy has been authorized or performed, who shall state an
3 objection to such procedure on moral or religious grounds
4 shall be required to participate in the procedure which will
5 result in the termination of pregnancy. The refusal of any
6 such person or employee to participate shall not form the
7 basis for any disciplinary or other recriminatory action
8 against such person.

9 (10)~~(9)~~ EXCEPTION.--The provisions of this section
10 shall not apply to the performance of a procedure which
11 terminates a pregnancy in order to deliver a live child.

12 (11)~~(10)~~ PENALTIES FOR VIOLATION.--

13 (a) Any person who willfully performs, or participates
14 in, a termination of a pregnancy in violation of the
15 requirements of this section is guilty of a felony of the
16 third degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084.

18 (b) Any person who performs, or participates in, a
19 termination of a pregnancy in violation of the provisions of
20 this section which results in the death of the woman is guilty
21 of a felony of the second degree, punishable as provided in s.
22 775.082, s. 775.083, or s. 775.084.

23 (12) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
24 RELIEF.--

25 (a) The father, if married to the mother at the time
26 she receives a partial-birth abortion, and, if the mother has
27 not attained the age of 18 years at the time she receives a
28 partial-birth abortion, the maternal grandparents of the fetus
29 may, in a civil action, obtain appropriate relief, unless the
30 pregnancy resulted from the plaintiff's criminal conduct or the
31 plaintiff consented to the abortion.

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1 (b) In a civil action under this section, appropriate
 2 relief includes:
 3 1. Monetary damages for all injuries, psychological
 4 and physical, occasioned by the violation of subsection (6).
 5 2. Damages equal to three times the cost of the
 6 partial-birth abortion.
 7 Section 3. This act shall take effect upon becoming a
 8 law.
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11 HOUSE SUMMARY

12 Prohibits "partial-birth abortion" and defines
 13 "partial-birth abortion" for purposes of the act.
 14 Provides a third degree felony penalty for any physician
 15 who knowingly performs a partial-birth abortion. Provides
 16 that a woman upon whom a partial-birth abortion is
 17 performed may not be prosecuted for a conspiracy to
 18 violate the act.

19 Provides that the act shall not apply to a partial-birth
 20 abortion that is necessary to save the life of a mother
 21 whose life is endangered by a physical disorder, illness,
 22 or injury, provided that no other medical procedure would
 23 suffice for that purpose.

24 Specifies parties who may recover damages in a civil
 25 action pursuant to a partial-birth abortion procedure and
 26 specifies appropriate relief.
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31 ADDITIONAL SPONSORS

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