

By the Committee on Health Care Services and Representatives Ball, Burroughs, Arnold, Dockery, Peadar, Brooks, Healey, Westbrook, Bronson, Bainter, Starks, Lacasa, Trovillion, Fasano, Kelly, Sindler, Bitner, Feeney, Putnam, (Additional Sponsors on Last Printed Page)

1                               A bill to be entitled  
2           An act relating to termination of pregnancies;  
3           renumbering and amending s. 390.001, F.S.;  
4           prohibiting partial-birth abortion; providing a  
5           penalty; providing civil liability; providing  
6           for relief; renumbering s. 390.002, F.S.;  
7           amending s. 390.011, F.S.; expanding scope of  
8           definitions; defining "partial-birth abortion";  
9           providing an effective date.

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

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13           Section 1. Section 390.001, Florida Statutes, is  
14           renumbered as section 390.0111, Florida Statutes, and amended  
15           to read:

16                390.0111 ~~390.001~~ Termination of pregnancies.--

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

19           ~~(a) "Physician" means a doctor of medicine or~~  
20           ~~osteopathic medicine licensed by the state under chapter 458~~  
21           ~~or chapter 459 or a physician practicing medicine or~~  
22           ~~osteopathic medicine in the employment of the United States or~~  
23           ~~this state.~~

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

25                1. ~~A hospital licensed by the state; or~~  
26                2. ~~A medical facility licensed by the Department of~~  
27           ~~Health and Rehabilitative Services pursuant to rules adopted~~  
28           ~~for that purpose, provided such rules shall require regular~~  
29           ~~evaluation and review procedures.~~

30           ~~(1)(2) TERMINATION IN THIRD LAST TRIMESTER; WHEN~~  
31           ~~ALLOWED.--No termination of pregnancy shall be performed on~~

1 any human being in the third ~~last~~ trimester of pregnancy  
2 unless:

3 (a) Two physicians certify in writing to the fact  
4 that, to a reasonable degree of medical probability, the  
5 termination of pregnancy is necessary to save the life or  
6 preserve the health of the pregnant woman; or

7 (b) The physician certifies in writing to the medical  
8 necessity for legitimate emergency medical procedures for  
9 termination of pregnancy in the third ~~last~~ trimester, and  
10 another physician is not available for consultation.

11 ~~(2)(3)~~ PERFORMANCE BY PHYSICIAN REQUIRED.--No  
12 termination of pregnancy shall be performed at any time except  
13 by a physician as defined in s. 390.011 ~~this section~~.

14 ~~(3)(4)~~ CONSENTS REQUIRED.--Prior to terminating a  
15 pregnancy, the physician shall obtain the written informed  
16 consent of the pregnant woman or, in the case of a mental  
17 incompetent, the written consent of her court-appointed  
18 guardian.

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

30 (b) In the event a medical emergency exists and the  
31 above requirements have not been complied with, a physician

1 may terminate a pregnancy if he or she has obtained at least  
2 one corroborative medical opinion attesting to the medical  
3 necessity for emergency medical procedures and to the fact  
4 that to a reasonable degree of medical certainty the  
5 continuation of the pregnancy would threaten the life of the  
6 pregnant woman.

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

22 (5) PARTIAL-BIRTH ABORTION PROHIBITED; EXCEPTION.--

23 (a) No physician shall knowingly perform a  
24 partial-birth abortion.

25 (b) A woman upon whom a partial-birth abortion is  
26 performed may not be prosecuted under this section for a  
27 conspiracy to violate the provisions of this section.

28 (c) This subsection shall not apply to a partial-birth  
29 abortion that is necessary to save the life of a mother whose  
30 life is endangered by a physical disorder, illness, or injury,  
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1 provided that no other medical procedure would suffice for  
2 that purpose.

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

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

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

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

4           (10) PENALTIES FOR VIOLATION.--Except as provided in  
5 subsection (7):

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

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

17           (11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;  
18 RELIEF.--

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

26           (b) In a civil action under this section, appropriate  
27 relief includes:

28           1. Monetary damages for all injuries, psychological  
29 and physical, occasioned by the violation of subsection (5).

30           2. Damages equal to three times the cost of the  
31 partial-birth abortion.

1           Section 2. Section 390.002, Florida Statutes, 1996  
2 Supplement, is renumbered as section 390.0112, Florida  
3 Statutes.

4           Section 3. Section 390.011, Florida Statutes, is  
5 amended to read:

6           390.011 Definitions.--As used in this chapter act:

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

10           (2) "Abortion clinic" or "clinic" means any facility  
11 in which abortions are performed other than a hospital or a  
12 physician's office which is not used primarily for the  
13 performance of abortions.

14           (3) "Department" means the Department of Health and  
15 Rehabilitative Services.

16           (4) "Hospital" means a facility licensed under chapter  
17 395.

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

22           ~~(6)(5)~~ "Physician" means a physician licensed under  
23 chapter 458 or chapter 459 or a physician practicing medicine  
24 or osteopathy in the employment of the United States ~~or this~~  
25 ~~state.~~

26           ~~(7)(6)~~ "Third trimester" means the weeks of pregnancy  
27 after the 24th week of pregnancy.

28           Section 4. This act shall take effect upon becoming a  
29 law.

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