

By Senator Rich

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1                   A bill to be entitled  
2           An act relating to reproductive health services and  
3           family planning; creating the "Prevention First Act";  
4           providing definitions; providing duties of licensed  
5           health care practitioners and facilities relating to  
6           the treatment of rape survivors; requiring the  
7           Department of Health to provide certain information;  
8           requiring the Agency for Health Care Administration to  
9           provide for enforcement and impose penalties;  
10          requiring the agency to adopt rules; amending s.  
11          390.011, F.S.; defining the term "contraception";  
12          creating s. 390.027, F.S.; specifying that the  
13          provision of contraception is not subject to ch. 390,  
14          F.S., relating to the termination of pregnancies;  
15          creating s. 465.191, F.S.; providing definitions;  
16          requiring licensed pharmacies to dispense certain  
17          forms of contraception without delay; specifying  
18          conditions under which a pharmacy may refuse to  
19          provide a contraceptive; providing for a person to  
20          file a complaint with the Department of Health if he  
21          or she believes that a violation of such provisions  
22          has occurred; providing for the Attorney General to  
23          bring a civil action; amending ss. 465.016 and  
24          465.023, F.S.; providing that a violation of  
25          requirements for dispensing contraception constitutes  
26          grounds for the Department of Health or the Board of  
27          Pharmacy to impose disciplinary action or suspend or  
28          revoke a pharmacist's license or permit; providing for  
29          severability; providing an effective date.

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WHEREAS, although the Centers for Disease Control and Prevention included family planning in its published list of Ten Great Public Health Achievements in the 20th Century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations, and

WHEREAS, the Legislature finds that family planning is basic health care for women and that access to contraception helps women prevent unintended pregnancy and control the timing and spacing of planned births, and

WHEREAS, 46.3 percent of pregnancies among women in this state are unintended according to the Florida Pregnancy Risk Assessment Monitoring System initiated by the United States Centers for Disease Control and Prevention and the Florida Department of Health, and

WHEREAS, currently more than 1.7 million women in Florida are in need of contraceptive services and supplies, and

WHEREAS, the Legislature finds that the victimization of women through rape is compounded by the possibility that the rape survivors may suffer unintended pregnancies, and half of such pregnancies end in abortion, and

WHEREAS, women rely on prescription contraceptives for a range of medical purposes in addition to birth control, such as regulation of menstrual cycles and the treatment of endometriosis, and

WHEREAS, the Legislature further finds that providing access to family planning information, family planning services, and birth control will prevent abortions and unintended pregnancies, thereby significantly reducing the number of women

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59 and teens who need medical assistance, Medicaid, Kidcare, and  
60 other social services, and

61 WHEREAS, the Legislature recognizes that the most recent  
62 study of women in need of family planning services by the  
63 Florida State University Center for Prevention and Early  
64 Intervention Policy found that only 26 percent of women in this  
65 state who are in need of such services are currently receiving  
66 them, and

67 WHEREAS, according to the Department of Health's Family  
68 Planning Program, for every dollar spent on family planning  
69 services, up to \$24 is saved as a result of averting  
70 expenditures for public programs that support women who have  
71 unintended pregnancies and their infants, NOW, THEREFORE,

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

74  
75 Section 1. This act may be cited as the "Prevention First  
76 Act."

77 Section 2. Treatment for survivors of rape.-

78 (1) DEFINITIONS.-As used in this section, the term:

79 (a) "Agency" means the Agency for Health Care

80 Administration.

81 (b) "Care to a rape survivor" means medical examinations,  
82 procedures, and services provided to a rape survivor.

83 (c) "Department" means the Department of Health.

84 (d) "Emergency contraception" means one or more  
85 prescription or over-the-counter drugs used separately or in  
86 combination to be administered to or self-administered by a  
87 patient to prevent pregnancy within a medically recommended

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88 amount of time after sexual intercourse and dispensed for that  
89 purpose, in accordance with professional standards of practice,  
90 and determined to be safe by the United States Food and Drug  
91 Administration.

92 (e) "Health care facility" means a facility licensed under  
93 chapter 395, Florida Statutes.

94 (f) "Incest" means a sexual offense described in s. 826.04,  
95 Florida Statutes.

96 (g) "Medically and factually accurate" means information  
97 that is supported by the weight of research conducted in  
98 compliance with accepted scientific methods and that is  
99 recognized as accurate and objective by leading professional  
100 organizations and agencies having relevant expertise in the  
101 field.

102 (h) "Rape" means sexual battery as described in ss. 794.011  
103 and 827.071, Florida Statutes.

104 (i) "Rape survivor" means a person who alleges or is  
105 alleged to have been raped or who is the victim of alleged  
106 incest and because of the alleged offense seeks treatment as a  
107 patient.

108 (2) DUTIES OF LICENSED PRACTITIONERS AND FACILITIES.-

109 (a) A health care practitioner licensed under chapter 458,  
110 chapter 459, or chapter 464, Florida Statutes, or a health care  
111 facility licensed under chapter 395, Florida Statutes, providing  
112 care to a rape survivor shall:

113 1. Provide each female rape survivor with medically and  
114 factually accurate, clear, and concise information concerning  
115 emergency contraception, including its indications and  
116 contraindications and the risks associated with its use.

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117 2. Inform each female rape survivor of her medical option  
118 to receive emergency contraception.

119 (b) If emergency contraception is requested, the health  
120 care practitioner or health care facility shall immediately  
121 provide the female rape survivor with the complete regimen of  
122 emergency contraception, unless contraindicated as determined by  
123 a pregnancy test approved by the United States Food and Drug  
124 Administration.

125 (c) The Agency for Health Care Administration, with input  
126 from the Florida Hospital Association and the Florida Council  
127 Against Sexual Violence, shall adopt a protocol to implement the  
128 requirements of this subsection.

129 (3) PATIENT INFORMATION.—

130 (a) The department shall:

131 1. Develop, prepare, and produce informational materials  
132 relating to emergency contraception for the prevention of  
133 pregnancy for distribution to and use in all health care  
134 facilities in the state which provide care to rape survivors, in  
135 quantities sufficient to comply with the requirements of this  
136 section, to the extent that funds are available.

137 2. Develop, prepare, and post information on the  
138 department's Internet website relating to the duty of licensed  
139 health care practitioners and health care facilities to provide  
140 emergency contraception to female rape survivors.

141 (b) Information provided to female rape survivors or female  
142 victims of sexual assault must:

143 1. Be medically and factually accurate;

144 2. Be clearly written, readily comprehensible, and  
145 culturally appropriate as determined by the department, in

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146 collaboration with community sexual assault programs and other  
147 relevant stakeholders; and

148 3. Explain the nature of emergency contraception, including  
149 its use, safety, efficacy, and availability.

150 (4) ENFORCEMENT AND PENALTIES.—

151 (a) In addition to any other remedies provided by law, the  
152 agency shall respond to complaints, using all available  
153 investigative tools, and shall periodically review whether a  
154 health care facility is in compliance with this section. If the  
155 agency finds that a health care facility is not in compliance  
156 with this section, the agency shall:

157 1. Impose a fine of \$5,000 per woman who is:

158 a. Denied medically and factually accurate and objective  
159 information about emergency contraception;

160 b. Not informed of her medical option to receive emergency  
161 contraception; or

162 c. Not provided the complete regimen of emergency  
163 contraception, if emergency contraception is requested.

164 2. Impose a fine of \$5,000 for failure to comply with this  
165 section. For every 30 days that a health care facility is not in  
166 compliance with this section, an additional fine of \$5,000 shall  
167 be imposed.

168 (b) The agency shall adopt rules as necessary to administer  
169 the provisions of this section.

170 Section 3. Subsection (9) is added to section 390.011,  
171 Florida Statutes, to read:

172 390.011 Definitions.—As used in this chapter, the term:

173 (9) "Contraception" means any drug or device approved by  
174 the United States Food and Drug Administration to prevent

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175 pregnancy.

176 Section 4. Section 390.027, Florida Statutes, is created to  
177 read:

178 390.027 Access to contraception.—The provision of  
179 contraception is not subject to or governed by this chapter.

180 Section 5. Section 465.191, Florida Statutes, is created to  
181 read:

182 465.191 Patient contraceptive protection.—

183 (1) DEFINITIONS.—As used in this section, the term:

184 (a) "Contraception" or "contraceptive" means any  
185 prescription drug or over-the-counter oral contraceptive  
186 approved by the United States Food and Drug Administration to  
187 prevent pregnancy.

188 (b) "Employee" means a person hired, by contract or any  
189 other form of agreement, by a pharmacy.

190 (c) "Product" means a drug or device approved by the United  
191 States Food and Drug Administration.

192 (d) "Professional clinical judgment" means the use of  
193 professional knowledge and skills to form a clinical judgment in  
194 accordance with prevailing medical standards.

195 (e) "Without delay," with respect to a pharmacy dispensing  
196 a prescription for contraception, means within the pharmacy's  
197 customary timeframe for dispensing the prescription for other  
198 products.

199 (2) DUTIES OF LICENSED PHARMACIES.—

200 (a) If a patient requests a contraceptive that is in stock,  
201 the pharmacy shall ensure that the contraceptive is provided to  
202 the patient or patient representative without delay.

203 (b) A pharmacy shall ensure that its employees do not:

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204 1. Intimidate, threaten, or harass a patient in the  
205 delivery of services relating to a request for contraception;

206 2. Interfere with or obstruct the delivery of services  
207 relating to a request for contraception;

208 3. Intentionally misrepresent or deceive a patient about  
209 the availability of contraception or its mechanism of action;

210 4. Breach medical confidentiality with respect to a request  
211 for contraception or threaten to breach such confidentiality; or

212 5. Refuse to return a valid, lawful prescription for  
213 contraception upon a patient's or patient representative's  
214 request.

215 (c) This section does not prohibit a pharmacy from refusing  
216 to provide a contraceptive to a patient if:

217 1. It is unlawful to dispense the contraceptive to the  
218 patient without a valid, lawful prescription and such  
219 prescription is not presented;

220 2. The patient or patient representative is unable to pay  
221 for the contraceptive; or

222 3. The employee of the pharmacy refuses to provide the  
223 contraceptive on the basis of a professional clinical judgment.

224 (d) This section does not prevent a pharmacist or other  
225 person from refusing to furnish any in-stock contraceptive for  
226 religious reasons so long as the pharmacy reasonably  
227 accommodates the patient or patient representative without delay  
228 and in compliance with this section.

229 (e) This section does not alter any standard established  
230 under the Florida Civil Rights Act of 1992.

231 (f) Any person who believes that a violation of this  
232 section has occurred may file a complaint with the Department of

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233 Health.

234 (g) If the Attorney General has reasonable cause to believe  
235 that any person or group of persons is being, has been, or may  
236 be injured by conduct constituting a violation of this section,  
237 the Attorney General may bring a civil action in the name of the  
238 state, as parens patriae on behalf of natural persons residing  
239 in the state.

240 Section 6. Paragraph (t) is added to subsection (1) of  
241 section 465.016, Florida Statutes, to read:

242 465.016 Disciplinary actions.—

243 (1) The following acts constitute grounds for denial of a  
244 license or disciplinary action, as specified in s. 456.072(2):

245 (t) Violating the provisions of s. 465.191.

246 Section 7. Subsection (1) of section 465.023, Florida  
247 Statutes, is amended to read:

248 465.023 Pharmacy permittee; disciplinary action.—

249 (1) The department or the board may revoke or suspend the  
250 permit of any pharmacy permittee, and may fine, place on  
251 probation, or otherwise discipline any pharmacy permittee who  
252 has:

253 (a) Obtained a permit by misrepresentation or fraud or  
254 through an error of the department or the board;

255 (b) Attempted to procure, or has procured, a permit for any  
256 other person by making, or causing to be made, any false  
257 representation;

258 (c) Violated any of the requirements of this chapter or any  
259 of the rules of the Board of Pharmacy; of chapter 499, known as  
260 the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-392,  
261 known as the "Federal Food, Drug, and Cosmetic Act"; of 21

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262 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse  
263 Prevention and Control Act; or of chapter 893;

264 (d) Been convicted or found guilty, regardless of  
265 adjudication, of a felony or any other crime involving moral  
266 turpitude in any of the courts of this state, of any other  
267 state, or of the United States; ~~or~~

268 (e) Dispensed any medicinal drug based upon a communication  
269 that purports to be a prescription as defined by s. 465.003(14)  
270 or s. 893.02 when the pharmacist knows or has reason to believe  
271 that the purported prescription is not based upon a valid  
272 practitioner-patient relationship that includes a documented  
273 patient evaluation, including history and a physical examination  
274 adequate to establish the diagnosis for which any drug is  
275 prescribed and any other requirement established by board rule  
276 under chapter 458, chapter 459, chapter 461, chapter 463,  
277 chapter 464, or chapter 466; or-

278 (f) Violated the provisions of s. 465.191.

279 Section 8. If any provision of this act or the application  
280 thereof to any person or circumstance is held invalid, the  
281 invalidity does not affect other provisions or applications of  
282 the act which can be given effect without the invalid provision  
283 or application, and to this end the provisions of this act are  
284 severable.

285 Section 9. This act shall take effect upon becoming a law.