

1 A bill to be entitled
2 An act relating to abortion; providing a short title;
3 providing legislative findings; amending s. 390.011, F.S.;
4 providing definitions; amending s. 390.0111, F.S.;
5 requiring a physician performing or inducing an abortion
6 to first make a determination of the probable
7 postfertilization age of the unborn child; providing an
8 exception; providing for disciplinary action against
9 noncompliant physicians; prohibiting an abortion if the
10 probable postfertilization age of the woman's unborn child
11 is 20 or more weeks; providing exceptions; providing
12 recordkeeping and reporting requirements for physicians;
13 providing for rulemaking; requiring an annual report by
14 the Department of Health; providing financial penalties
15 for late reports; providing for civil actions to require
16 reporting; providing for disciplinary action against
17 noncompliant physicians; providing criminal penalties for
18 intentional or reckless falsification of a report;
19 providing criminal penalties for any person who
20 intentionally or recklessly performs or attempts to
21 perform an abortion in violation of specified provisions;
22 providing that a penalty may not be assessed against a
23 woman involved in such an abortion or attempt; providing
24 for civil actions by certain persons for intentional or
25 reckless violations; providing for actions for injunctive
26 relief by certain persons for intentional violations;
27 providing for award of attorney's fees in certain
28 circumstances; requiring that in every civil or criminal

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29 proceeding or action brought under the court rule on
30 whether the anonymity of any woman upon whom an abortion
31 was performed or attempted shall be preserved from public
32 disclosure if she does not give her consent to such
33 disclosure; requiring specified findings if a court
34 determines that the anonymity of the woman should be
35 preserved from public disclosure; conforming cross-
36 references; amending s. 765.113, F.S.; conforming a cross-
37 reference; requiring rulemaking by the Department of
38 Health by a specified date; providing an effective date.
39

40 Be It Enacted by the Legislature of the State of Florida:
41

42 Section 1. This act may be cited as the "Pain-Capable
43 Unborn Child Protection Act."

44 Section 2. The Legislature finds that:

45 (1) By 20 weeks after fertilization there is substantial
46 evidence that an unborn child has the physical structures
47 necessary to experience pain.

48 (2) There is substantial evidence that, by 20 weeks after
49 fertilization, unborn children seek to evade certain stimuli in
50 a manner that in an infant or an adult would be interpreted as a
51 response to pain.

52 (3) Anesthesia is routinely administered to unborn
53 children who have developed 20 weeks or more past fertilization
54 who undergo prenatal surgery.

55 (4) Even before 20 weeks after fertilization, unborn
56 children have been observed to exhibit hormonal stress responses

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57 to painful stimuli. Such responses were reduced when pain
58 medication was administered directly to such unborn children.

59 (5) This state has a compelling state interest in
60 protecting the lives of unborn children from the stage at which
61 substantial medical evidence indicates that they are capable of
62 feeling pain.

63 Section 3. Section 390.011, Florida Statutes, is amended
64 to read:

65 390.011 Definitions.—As used in this chapter, the term:

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

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

71 (a) A hospital; or

72 (b) A physician's office, provided that the office is not
73 used primarily for the performance of abortions.

74 (3) "Agency" means the Agency for Health Care
75 Administration.

76 (4) "Attempt to perform or induce an abortion" means an
77 act, or an omission of a statutorily required act, that, under
78 the circumstances as the person believes them to be, constitutes
79 a substantial step in a course of conduct planned to culminate
80 in the performance or induction of an abortion.

81 (5)~~(4)~~ "Department" means the Department of Health.

82 (6) "Fertilization" means the fusion of a human
83 spermatozoon with a human ovum.

84 (7)~~(5)~~ "Hospital" means a facility as defined in s.

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85 395.002(12) and licensed under chapter 395 and part II of
86 chapter 408.

87 (8) "Medical emergency" means a condition that, in
88 reasonable medical judgment, so complicates the medical
89 condition of the pregnant woman as to necessitate the immediate
90 termination of her pregnancy to avert her death or for which a
91 delay will create a serious risk of substantial and irreversible
92 physical impairment of a major bodily function. A condition is
93 not a medical emergency if it is based on a claim or diagnosis
94 that the woman will engage in conduct that would result in her
95 death or in substantial and irreversible physical impairment of
96 a major bodily function.

97 (9)-(6) "Partial-birth abortion" means a termination of
98 pregnancy in which the physician performing the termination of
99 pregnancy partially vaginally delivers a living fetus before
100 killing the fetus and completing the delivery.

101 (10)-(7) "Physician" means a physician licensed under
102 chapter 458 or chapter 459 or a physician practicing medicine or
103 osteopathic medicine in the employment of the United States.

104 (11) "Postfertilization age" means the age of an unborn
105 child as calculated from the fertilization of the human ovum.

106 (12) "Probable postfertilization age of the unborn child"
107 means what, in reasonable medical judgment, will with reasonable
108 probability be the postfertilization age of the unborn child at
109 the time an abortion is planned to be performed.

110 (13) "Reasonable medical judgment" means a medical
111 judgment that would be made by a reasonably prudent physician,
112 knowledgeable about the case and the treatment possibilities

113 with respect to the medical conditions involved.

114 ~~(14)(8)~~ "Third trimester" means the weeks of pregnancy
 115 after the 24th week of pregnancy.

116 (15) "Unborn child" or "fetus" means an individual
 117 organism of the species homo sapiens from fertilization until
 118 live birth.

119 Section 4. A new subsection (1) is added to section
 120 390.0111, Florida Statutes, subsections (1) through (11) of that
 121 section are renumbered as subsections (2) through (12),
 122 respectively, and present subsection (10) and paragraph (b) of
 123 present subsection (11) of that section are amended, to read:

124 390.0111 Termination of pregnancies.—

125 (1) PAIN-CAPABLE UNBORN CHILD PROTECTION.—

126 (a)1. Except in the case of a medical emergency that
 127 prevents compliance with this subsection, an abortion may not be
 128 performed or induced or be attempted to be performed or induced
 129 unless the physician performing or inducing it has first made a
 130 determination of the probable postfertilization age of the
 131 unborn child or relied upon such a determination made by another
 132 physician. In making such a determination, a physician shall
 133 make such inquiries of the pregnant woman and perform or cause
 134 to be performed such medical examinations and tests as a
 135 reasonably prudent physician, knowledgeable about the case and
 136 the medical conditions involved, would consider necessary to
 137 perform in making an accurate diagnosis with respect to
 138 postfertilization age.

139 2. Failure by any physician to conform to any requirement
 140 of this paragraph constitutes grounds for disciplinary action

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141 under s. 458.331 or s. 459.015.

142 (b) A person may not perform or induce or attempt to
 143 perform or induce an abortion upon a woman when it has been
 144 determined, by the physician performing or inducing the abortion
 145 or by another physician upon whose determination that physician
 146 relies, that the probable postfertilization age of the woman's
 147 unborn child is 20 or more weeks unless, in reasonable medical
 148 judgment:

149 1. She has a condition that so complicates her medical
 150 condition as to necessitate the abortion of her pregnancy to
 151 avert her death or to avert serious risk of substantial and
 152 irreversible physical impairment of a major bodily function; or

153 2. It is necessary to preserve the life of an unborn
 154 child.

155
 156 Such a condition may not be deemed to exist if it is based on a
 157 claim or diagnosis that the woman will engage in conduct that
 158 would result in her death or in substantial and irreversible
 159 physical impairment of a major bodily function. With respect to
 160 the exceptions in subsections 1. and 2., the physician shall
 161 terminate the pregnancy in the manner that, in reasonable
 162 medical judgment, provides the best opportunity for the unborn
 163 child to survive, unless, in reasonable medical judgment,
 164 termination of the pregnancy in that manner would pose a greater
 165 risk either of the death of the pregnant woman or of the
 166 substantial and irreversible physical impairment of a major
 167 bodily function of the woman than would another available
 168 method. Such greater risk may not be deemed to exist if it is

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169 based on a claim or diagnosis that the woman will engage in
170 conduct that would result in her death or in substantial and
171 irreversible physical impairment of a major bodily function.

172 (c) Any physician who performs or induces or attempts to
173 perform or induce an abortion shall report to the department, on
174 a schedule and in accordance with forms and rules and
175 regulations adopted by the department, the following:

176 1. If a determination of probable postfertilization age
177 was made, the probable postfertilization age determined and the
178 method and basis of the determination.

179 2. If a determination of probable postfertilization age
180 was not made, the basis of the determination that a medical
181 emergency existed.

182 3. If the probable postfertilization age was determined to
183 be 20 or more weeks, the basis of the determination that the
184 pregnant woman had a condition that so complicated her medical
185 condition as to necessitate the abortion of her pregnancy to
186 avert her death or to avert serious risk of substantial and
187 irreversible physical impairment of a major bodily function, or
188 the basis of the determination that it was necessary to preserve
189 the life of an unborn child.

190 4. The method used for the abortion and, in the case of an
191 abortion performed when the probable postfertilization age was
192 determined to be 20 or more weeks, whether the method of
193 abortion used was one that, in reasonable medical judgment,
194 provided the best opportunity for the unborn child to survive
195 or, if such a method was not used, the basis of the
196 determination that termination of the pregnancy in that manner

197 would pose a greater risk either of the death of the pregnant
198 woman or of the substantial and irreversible physical impairment
199 of a major bodily function of the woman than would other
200 available methods.

201 (d) By June 30 of each year, the department shall issue a
202 public report providing statistics for the previous calendar
203 year compiled from all of the reports covering that year
204 submitted in accordance with paragraph (c). Each such report
205 shall also provide the statistics for all previous calendar
206 years during which this subsection was in effect, adjusted to
207 reflect any additional information from late or corrected
208 reports. The department shall take care to ensure that none of
209 the information included in the public reports could reasonably
210 lead to the identification of any pregnant woman upon whom an
211 abortion was performed.

212 (e) Any physician who fails to submit a report under
213 paragraph (c) by the end of 30 days after the due date shall be
214 subject to a late fee of \$500 for each additional 30-day period
215 or portion of a 30-day period the report is overdue. Any
216 physician required to report in accordance with this subsection
217 who has not submitted a report, or has submitted only an
218 incomplete report, more than 1 year after the due date, may be
219 directed by a court of competent jurisdiction to submit a
220 complete report within a time period stated by court order or be
221 subject to civil contempt. Failure by any physician to conform
222 to any requirement of this subsection constitutes grounds for
223 disciplinary action under s. 458.331 or s. 459.015. Intentional
224 or reckless falsification of any report required under paragraph

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225 (c) is a misdemeanor of the second degree, punishable as
 226 provided in s. 775.082 or s. 775.083.

227 (f) Any person who intentionally or recklessly performs or
 228 attempts to perform an abortion in violation of paragraph (b)
 229 commits a felony of the third degree, punishable as provided in
 230 s. 775.082, s. 775.083, or s. 775.084. A penalty may not be
 231 assessed against the woman upon whom the abortion was performed
 232 or attempted to be performed.

233 (g)1. Any woman upon whom an abortion was performed in
 234 violation of this subsection or the father of the unborn child
 235 who was the subject of such an abortion may maintain an action
 236 against the person who performed the abortion in an intentional
 237 or a reckless violation of this subsection for actual damages.
 238 Any woman upon whom an abortion was attempted in violation of
 239 this subsection may maintain an action against the person who
 240 attempted to perform the abortion in an intentional or a
 241 reckless violation of this subsection for actual damages.

242 2. The woman upon whom an abortion was performed or
 243 attempted in violation of this subsection has a cause of action
 244 for injunctive relief against any person who has intentionally
 245 violated this subsection. Such a cause of action may also be
 246 maintained by a spouse, parent, sibling, guardian, or current or
 247 former licensed health care provider of such a woman or by the
 248 Attorney General or a county attorney with appropriate
 249 jurisdiction. An injunction granted under this subparagraph
 250 shall prevent the violator from performing or attempting more
 251 abortions in violation of this subsection in this state.

252 3. If judgment is rendered in favor of the plaintiff in an

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253 action described in this section, the court shall also render
254 judgment for reasonable attorney's fees in favor of the
255 plaintiff against the defendant.

256 4. If judgment is rendered in favor of the defendant and
257 the court finds that the plaintiff's suit was frivolous and
258 brought in bad faith, the court shall also render judgment for
259 reasonable attorney's fees in favor of the defendant against the
260 plaintiff.

261 5. Neither damages nor attorney's fees may be assessed
262 against the woman upon whom an abortion was performed or
263 attempted except as provided in subparagraph 4.

264 (h) In every civil or criminal proceeding or action
265 brought under this subsection, the court shall rule whether the
266 anonymity of any woman upon whom an abortion was performed or
267 attempted shall be preserved from public disclosure if she does
268 not give her consent to such disclosure. The court, upon motion
269 or sua sponte, shall make such a ruling and, upon determining
270 that her anonymity should be preserved, shall issue orders to
271 the parties, witnesses, and counsel and direct the sealing of
272 the record and exclusion of individuals from courtrooms or
273 hearing rooms to the extent necessary to safeguard her identity
274 from public disclosure. Each such order shall be accompanied by
275 specific written findings explaining why the anonymity of the
276 woman should be preserved from public disclosure, why the order
277 is essential to that end, how the order is narrowly tailored to
278 serve that interest, and why no reasonable less restrictive
279 alternative exists. In the absence of written consent of the
280 woman upon whom an abortion was performed or attempted, anyone,

281 other than a public official, who brings an action under
 282 paragraph (g) shall do so under a pseudonym. This paragraph does
 283 not require the concealment of the identity of the plaintiff or
 284 of witnesses from the defendant or from attorneys for the
 285 defendant.

286 (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in
 287 subsections (1), (4), ~~(3)~~ and (8)~~(7)~~:

288 (a) Any person who willfully performs, or actively
 289 participates in, a termination of pregnancy procedure in
 290 violation of the requirements of this section commits a felony
 291 of the third degree, punishable as provided in s. 775.082, s.
 292 775.083, or s. 775.084.

293 (b) Any person who performs, or actively participates in,
 294 a termination of pregnancy procedure in violation of the
 295 provisions of this section which results in the death of the
 296 woman commits a felony of the second degree, punishable as
 297 provided in s. 775.082, s. 775.083, or s. 775.084.

298 (12)~~(11)~~ CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
 299 RELIEF.—

300 (b) In a civil action under this section, appropriate
 301 relief includes:

302 1. Monetary damages for all injuries, psychological and
 303 physical, occasioned by the violation of subsection (6) ~~(5)~~.

304 2. Damages equal to three times the cost of the partial-
 305 birth abortion.

306 Section 5. Subsection (2) of section 765.113, Florida
 307 Statutes, is amended to read:

308 765.113 Restrictions on providing consent.—Unless the

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309 principal expressly delegates such authority to the surrogate in
310 writing, or a surrogate or proxy has sought and received court
311 approval pursuant to rule 5.900 of the Florida Probate Rules, a
312 surrogate or proxy may not provide consent for:

313 (2) Withholding or withdrawing life-prolonging procedures
314 from a pregnant patient prior to viability as defined in s.
315 390.0111~~(5)~~~~(4)~~.

316 Section 6. Notwithstanding any other provision of law,
317 within 90 days after the effective date of this act the
318 Department of Health shall adopt rules to assist in compliance
319 with s. 390.0111(1)(c), (d), and (e), Florida Statutes, as
320 created by this act.

321 Section 7. This act shall take effect July 1, 2011.