The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL:	SB 290
INTRODUCER:	Senator Flores and others
SUBJECT:	Abortions
DATE:	February 15, 2012
REVISED:	02/22/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Favorable**
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill consolidates provisions relating to abortion that are currently located in several chapters of the Florida Statutes into chapter 390, F.S. Provisions that have been struck down by the courts are repealed. The bill substitutes the term "abortion," which is defined in s. 390.011(1), F.S., for the term "termination of pregnancy," throughout the chapter.

The bill prohibits abortions from being performed while a woman is in her third trimester of pregnancy or after a fetus has attained viability, unless:

- Two physicians certify that the abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman; or
- The physician certifies to the existence of a medical emergency, and another physician is not available for consultation.

The bill requires an abortion clinic to provide conspicuous written notice on its premises and on any advertisement that the clinic is prohibited from performing abortions in the third trimester or after viability and requires the Agency for Health Care Administration (AHCA) to adopt rules to regulate such advertisements. Violation of the advertising requirements is a first-degree misdemeanor.

The bill requires any physician who performs abortions in an abortion clinic to annually complete at least 3 hours of continuing education that relate to ethics, as part of the licensure and renewal process. The bill also provides for restrictions as to where an abortion may be performed.

The bill specifies that consent to an abortion is voluntary and informed only if the statutory requirements for informed consent are completed at least 24 hours before the abortion is performed.

This bill increases the penalty for failure to properly dispose of fetal remains from a second-degree to a first-degree misdemeanor. The Department of Health is required to revoke the license of any licensed health care practitioner who has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain felonies relating to the performance of an abortion in violation of s. 390.0111, F.S.

The bill provides certain rights, powers, and privileges to an infant born alive subsequent to an attempted abortion and requires health care practitioners present at the time to exercise diligence to preserve the life and health of the infant. The bill specifies that, in the third trimester or after viability when two physicians determine that an abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman, the abortion may only be performed if a physician other than the physician performing the abortion is in attendance to take control of any infant born alive to provide immediate medical care to the infant.

This bill also provides that it is a misdemeanor of the first degree if:

- A person establishes, conducts, manages, or operates an abortion clinic without a valid current license.
- An abortion clinic is not wholly owned and operated by a physician who has received certain training during residency, unless the clinic was licensed before July 1, 2012.

It is also a misdemeanor of the first-degree for a person to advertise or facilitate an advertisement of services or drugs for the purpose of performing an abortion in violation of ch. 390, F.S. A licensed health care practitioner who is guilty of a felony for providing unlawful abortion services is subject to licensure revocation. The maximum fine that the AHCA may impose on an abortion clinic for violation of licensure requirements is increased from $1,000 to $5,000.

This bill also requires a director of a hospital, validly licensed abortion clinic, or physician's office where abortions are performed to report to the AHCA specific information, which the AHCA must then submit to the Centers for Disease Control and Prevention (CDC) and make available on the AHCA website prior to each general legislative session. Additionally, the AHCA must provide an annual report to the Governor and Legislature, which contains such information. None of the reported or published information is to contain any personal indentifying information.

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, 390.01114, 390.0112, 390.012, 390.014, 390.018, 456.013, and 765.113.

This bill repeals the following sections of the Florida Statutes: 782.30, 782.32, 782.34, 782.36, 797.02 and 797.03.

This bill also creates an undesignated section of the Florida Statutes.

II. Present Situation:

Background

Under Florida law the term "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[1] "Viability" means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.[2] Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). An abortion can be performed by surgical or medical means (medicines that induce a miscarriage).[3]

An abortion in Florida must be performed by a physician licensed to practice medicine or osteopathic medicine who is licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[4] No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.[5]

Currently, abortion clinics, hospitals, and physicians that perform abortions provide a monthly report to the AHCA that provides aggregate data regarding the number of abortions performed, the reason for the abortion, and the gestational age of the fetus. According to the AHCA, for the calendar year 2009, providers submitted a total of 1,210 monthly reports that reported a total of 81,916 abortions. During calendar year 2010, a total of 1,203 monthly reports were submitted that reported a total of 79,908 abortions.[6]

Abortion provisions are included in ch. 390, F.S., ss. 782.30 – 782.36, F.S., and ch. 797, F.S.

Partial-Birth Abortion

Florida has enacted two prohibitions upon partial-birth abortion.[7] Both have been invalidated by the courts.[8] Section 390.011(6), F.S., defines partial-birth abortion as a termination of pregnancy

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[1] Section 390.011(1), F.S.
[2] Section 390.0111(4), F.S.
[3] Suzanne R. Trupin, M.D., *Elective Abortion*, Updated January 31, 2012. Found at: <http://www.emedicine.com/med/TOPIC3312.HTM> (Last visited on February 15, 2012).
[4] Section 390.0111(2) and s. 390.011(7), F.S.
[5] Section 390.0111(8), F.S.
[6] Agency for Health Care Administration, *2012 Bill Analysis & Economic Impact Statement for SB 290*, on file with the Senate Health Regulation Committee.
[7] *See* ss. 782.30-782.36, F.S. (the Partial-Birth Abortion Act) and ss. 390.011(6) and 390.0111(5) and (11), F.S.
[8] *A Choice for Women v. Butterworth*, 2000 WL 34403086 (S.D.Fla. July 11, 2000) invalidated the Partial-Birth Abortion Act (ss. 782.30-782.36, F.S.) and *A Choice for Women v. Butterworth*, 54 F.Supp.2d 1148 (S.D. Fla. December 2, 1998) invalidated the partial-birth abortion provisions of ss. 390.011(6) and 390.0111(5) and (11), F.S.

in which the physician performing the termination of pregnancy partially vaginally delivers a living fetus before killing the fetus and completing the delivery. Section 782.32(1), F.S., defines "partially born" to mean that the living fetus's intact body, with the entire head attached, is presented so that:

(a) There has been delivered past the mother's vaginal opening:
1. The fetus's entire head, in the case of a cephalic presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed; or
2. Any portion of the fetus's torso above the navel, in the case of a breech presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed.

(b) There has been delivered outside the mother's abdominal wall:
1. The fetus's entire head, in the case of a cephalic presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed; or
2. Any portion of the child's torso above the navel, in the case of a breech presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed.

Section 782.34, F.S., provides that, except to save the life of the mother, any person who intentionally kills a living fetus while that fetus is partially born commits the crime of partial-birth abortion, which is a felony of the second degree.

Congress enacted the Partial-Birth Abortion Ban Act of 2003.[9] The United States Supreme Court has upheld the federal ban.[10] Partial-birth abortion is defined to mean an abortion in which the person performing the abortion –

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

Abortion Clinics

Abortion clinics are licensed and regulated by the AHCA under ch. 390, F.S., and part II of ch. 408, F.S. The AHCA has adopted rules in Chapter 59A-9, Florida Administrative Code, related to abortion clinics. Section 390.012, F.S., requires these rules to address the physical facility, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, and follow-up care. The rules relating to the medical screening and evaluation of each abortion clinic patient, at a minimum, shall require:

- A medical history, including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history;

[9] 18 U.S.C. s. 1531.
[10] *Gonzales v. Carhart*, 550 U.S. 124, 127 S.Ct. 1610 (Decided April 18, 2007).

- A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa;
- The appropriate laboratory tests, including:
  - For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure,
  - A test for anemia,
  - Rh typing, unless reliable written documentation of blood type is available, and
  - Other tests as indicated from the physical examination;
- An ultrasound evaluation for patients who elect to have an abortion after the first trimester. If a person who is not a physician performs the ultrasound examination, that person must have documented evidence that he or she has completed a course in the operation of ultrasound equipment. If a patient requests, the physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant must review the ultrasound evaluation results and the estimate of the probable gestational age of the fetus with the patient before the abortion procedure is performed; and
- The physician to estimate the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and write the estimate in the patient's medical history. The physician must keep original prints of each ultrasound examination in the patient's medical history file.

Section 390.0111(4), F.S., provides for the standard of medical care to be used during viability. If a termination of pregnancy is performed during viability, a person who performs or induces the termination of pregnancy may not fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which the person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted.

The biennial license fee for an abortion clinic is $514. The administrator responsible for the day to day operations of the abortion clinic and the chief financial officer are required to submit to a level 2 (statewide and nationwide) background screening.[11]

Relevant Case Law

In 1973, the landmark case of *Roe v. Wade* established that restrictions on a woman's access to secure an abortion are subject to a strict scrutiny standard of review.[12] In *Roe*, the U.S. Supreme Court determined that a woman's right to have an abortion is part of the fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, justifying the highest level of review.[13] Specifically, the Court concluded that: (1) during the first trimester, the state may not regulate the right to an abortion; (2) after the first trimester, the state may impose regulations to protect the health of the mother; and (3) after viability, the state may regulate and proscribe abortions, except when it is necessary to preserve

[11] Agency for Health Care Administration, *Abortion Clinic*. Found at: <http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/abortion.shtml> (Last visited on February 15, 2012).
[12] 410 U.S. 113 (1973).
[13] 410 U.S. 113, 154 (1973).

the life or health of the mother.[14] Therefore, a state regulation limiting these rights may be justified only by a compelling state interest, and the legislative enactments must be narrowly drawn to express only legitimate state interests at stake.[15]

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court relaxed the standard of review in abortion cases involving adult women from strict scrutiny to unduly burdensome, while still recognizing that the right to an abortion emanates from the constitutional penumbra of privacy rights.[16] In *Planned Parenthood*, the Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference.[17] The Court concluded that the state may regulate the abortion as long as the regulation does not impose an undue burden on a woman's decision to choose an abortion.[18] If the purpose of a provision of law is to place substantial obstacles in the path of a woman seeking an abortion before viability, it is invalid; however, after viability the state may restrict abortions if the law contains exceptions for pregnancies endangering a woman's life or health.[19]

The unduly burdensome standard as applied in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which is generally considered to be a hybrid between strict scrutiny and intermediate level scrutiny, shifted the Court's focus to whether a restriction creates a substantial obstacle to access. This is the prevailing standard today applied in cases in which abortion access is statutorily restricted.

However, the undue burden standard was held not to apply in Florida. The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours of actual notice to one parent or to the legal guardian of a pregnant minor before terminating the pregnancy of the minor. Although a judicial waiver procedure was included, the act was never enforced.[20] In 2003, the Florida Supreme Court[21] ruled this legislation unconstitutional on the grounds that it violated a minor's right to privacy, as expressly protected under Article I, s. 23 of the Florida Constitution.[22] Citing the principle holding of *In re T.W.*,[23] the Court reiterated that, as the privacy right is a fundamental right in Florida, any restrictions on privacy warrant a strict scrutiny review, rather than that of an undue burden. Here, the Court held that the state failed to show a compelling state interest and therefore, the Court permanently enjoined the enforcement of the Parental Notice of Abortion Act.[24]

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[14] 410 U.S. 113, 162-65 (1973).
[15] 410 U.S. 113, 152-56 (1973).
[16] 505 U.S. 833, 876-79 (1992).
[17] *Id.*
[18] *Id*.
[19] *Id.*
[20] *See* s. 390.01115, F.S. (repealed by s. 1, ch. 2005-52, Laws of Florida). Ch. 2005-52, Laws of Florida created s. 390.01114, F.S., the revised Parental Notice of Abortion Act.
[21] *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612, 619-20 (Fla. 2003).
[22] The constitutional right of privacy provision reads: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." FLA. CONST. art. I, s. 23.
[23] 551 So. 2d 1186, 1192 (Fla. 1989).
[24] *North Florida Women's Health and Counseling Services, supra* note 21, at 622 and 639-40.

Centers for Disease Control and Prevention (CDC)

The CDC began collecting abortion data (abortion surveillance) in 1969 to document the number and characteristics of women obtaining "legal induced" abortions. The CDC's surveillance system counts legal induced abortions only. For the CDC's surveillance purposes, legal abortion is defined as a procedure performed by a licensed physician, or a licensed advanced practice clinician acting under the supervision of a licensed physician, to induce the termination of a pregnancy.[25]

States and other territories voluntarily report data to the CDC for inclusion in its annual Abortion Surveillance Report.[26] The CDC's Division of Reproductive Health prepares surveillance reports as data becomes available. There is no national requirement for data submission or reporting.[27]

Those states requiring the reporting of information on induced abortions use various methods to collect the data. Some states include induced abortion reporting as a part of their fetal death reporting system, while a majority of states use a separate form, usually called Report of Induced Termination of Pregnancy, for the reporting of induced abortions. Regardless of the reporting system used, all states with reporting systems require the reporting of all induced abortions regardless of length of gestation.[28]

The CDC has developed a Standard Report of Induced Termination of Pregnancy to serve as a model for use by states. The model report suggests that the state's report should include the:[29]

- Facility name where the induced termination of pregnancy occurred.
- City, town, or location where the pregnancy termination occurred.
- County where the pregnancy termination occurred.
- Hospital, clinic, or other patient identification number, which would enable the facility or physician to access the medical file of the patient.
- Age of the patient in years at her last birthday.
- Marital status of the patient.
- Date of the pregnancy termination.
- Place the patient actually and physically lives or resides, which is not necessarily a patient's home state, voting residence, mailing address, or legal residence.
- Name of the state, county, and city where the patient lives.
- Number of the ZIP code where the patient lives.
- Origin of the patient, if Hispanic.
- Ancestry of the patient.
- Race of the patient.
- Highest level of education completed by the patient.

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[25] Centers for Disease Control and Prevention, *CDC's Abortion Surveillance System FAQs*. Found at: <http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm> (Last visited on February 15, 2012).
[26] Florida does not report abortion data to the CDC. *Supra* fn. 6.
[27] *Supra* fn. 25.
[28] Centers for Disease Control and Prevention, *Handbook on the Reporting of Induced Termination of Pregnancy*, April 1998. Found at: <http://www.cdc.gov/nchs/data/misc/hb_itop.pdf> (Last visited on March 23, 2011).
[29] *Id*.

- Date the patient's last normal menstrual period began.
- Length of gestation as estimated by the attending physician.
- Number of previous pregnancies, including live births and other terminations.
- Type of termination procedure used.
- Name of the attending physician.
- Name of the person completing the report.

The CDC reports that its surveillance data is used to:[30]

- Identify characteristics of women who are at high risk of unintended pregnancy.
- Evaluate the effectiveness of programs for reducing teen pregnancies and unintended pregnancy among women of all ages.
- Calculate pregnancy rates based on the number of pregnancies ending in abortion in conjunction with birth data and fetal loss estimates.
- Monitor changes in clinical practice patterns related to abortion, such as changes in the types of procedures used, and weeks of gestation at the time of abortion.

Additionally, demographers use information in the report to calculate pregnancy rates, which are combined estimates of births and fetal loss and managers of public health programs use this data to evaluate the programs' effectiveness to prevent unintended pregnancy. There have historically been other data uses; such as, the calculation of the mortality rate of specific abortion procedures.

The CDC reports that in 2008,[31] there were 825,564 legal induced abortions reported to the CDC from 49 reporting areas. This represents essentially no change from the number of abortions reported in 2007. The abortion rate for 2008 was 16.0 abortions per 1,000 women aged 15 through 44 years. This also is also is unchanged from 2007. The abortion ratio was 234 abortions per 1,000 live births in 2008. This is a 1 percent increase from 2007. During 1999 through 2008, the reported abortion numbers, rates, and ratios decreased 3 percent, 4 percent, and 10 percent, respectively. During 1999 through 2008, women aged 20 to 29 years accounted for the majority of abortions. The majority (62.8 percent) of abortions in 2008 were performed at 8 weeks' gestation or less and 91.4 percent were performed at 13 weeks' gestation or less; 14.6 percent of all abortions were medical abortions.[32]

Health Care Practitioner Licensure Authority of the Department of Health

The Department of Health is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001(4), F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture),
- Chapter 458 (medical practice),
- Chapter 459 (osteopathic medicine),

[30] *Supra* fn. 25.
[31] This is the most recent data available on the CDC website, which is available at: <http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm> (Last visited on February 15, 2012).
[32] *Supra* fn. 25.

- Chapter 460 (chiropractic medicine),
- Chapter 461 (podiatric medicine),
- Chapter 462 (naturopathy),
- Chapter 463 (optometry),
- Chapter 464 (nursing),
- Chapter 465 (pharmacy),
- Chapter 466 (dentistry),
- Chapter 467 (midwifery),
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics),
- Chapter 478 (electrolysis),
- Chapter 480 (massage practice),
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists),
- Chapter 484 (dispensing of optical devices and hearing aids),
- Chapter 486 (physical therapy practice),
- Chapter 490 (psychological services), and
- Chapter 491 (clinical, counseling, and psychotherapy services)

III. Effect of Proposed Changes:

Section 1 amends s. 390.011, F.S., to define the terms "born alive," "health care practitioner," "medical emergency," and "viability." These definitions apply to all of ch. 390, F.S. The definition of "health care practitioner" is identical to the definition of the same term in s. 456.001(4), F.S., relating to health professions and occupations. The definition of "medical emergency" is being moved from s. 390.01114(2)(d), F.S., to this section. The definition of "viability" is being moved from s. 390.0111(4), F.S., to this section.

The bill also significantly modifies the definition of "partial-birth abortion" to conform to the federal ban on partial-birth abortion[33] which the United States Supreme Court has upheld.[34]

Section 2 amends s. 390.0111, F.S., to prohibit abortions from being performed after the period at which, in the physician's best medical judgment, the fetus has attained viability or during the third trimester of pregnancy. However, an abortion may be performed after viability or during the third trimester of pregnancy if two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman, or if one physician certifies in writing to the existence of a medical emergency[35] and another physician is not available for consultation.

[33] *Supra*, fn. 9.
[34] *Supra* fn.10.
[35] Section 390.011(8), F.S., in the bill, defines a "medical emergency" as a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

This section also requires:

- An abortion clinic that advertises its services to provide conspicuous notice on its premises and on advertisements that it is prohibited from performing abortions in the third trimester or after viability.
- Physicians who offer to perform or perform abortions in abortion clinics to annually complete at least 3 hours of continuing education that relate to ethics.
- Abortions to be performed in a hospital, validly licensed abortion clinic, or physician's office, unless the law specifically requires the abortion to be performed in a hospital or an emergency care situation exists.

The bill specifies that consent to an abortion is voluntary and informed only if the statutory requirements for informed consent are completed at least 24 hours before the abortion is performed. The bill provides that, if noncompliance by a physician with the consent requirements is necessary to prevent the death or irreversible impairment of a major bodily function of the pregnant woman, it is a defense to a disciplinary action under the physician's licensing statute.

The Department of Health is required to permanently revoke the license of a licensed health care practitioner who has been convicted or found guilty of, or entered a plea of guilty or nolo contendre to, regardless of adjudication, a felony criminal act for willfully performing an unlawful abortion.

The bill creates a new subsection regarding the rights of infants born alive subsequent to an attempted abortion. Such infants are entitled to the same rights, powers, and privileges as are granted to any other child born alive in the course of birth that is not subsequent to an attempted abortion. If an infant is born alive subsequent to an attempted abortion, any health care practitioner present at the time must humanely exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive in the course of birth that is not subsequent to an attempted abortion. This provision is similar to the standard of medical care to be used during viability in subsection (4) of this section.

The bill specifies that, in the third trimester or after viability when two physicians determine that an abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman, the abortion may only be performed if a physician other than the physician performing the abortion is in attendance to take control of any infant born alive to provide immediate medical care to the infant. The physician who performs the abortion must take all reasonable steps consistent with the abortion procedure to preserve the life and health of the unborn child.

This section increases the penalty for a person who fails to dispose of fetal remains in an appropriate manner. The penalty is increased from a misdemeanor of a second degree to a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. (maximum imprisonment of 1 year or maximum fine of $1,000). In addition, it is a misdemeanor of the first degree for a person to advertise or facilitate an advertisement of services or drugs for the purpose of performing an abortion in violation of ch. 390, F.S. This is the existing statutory

prohibition contained in s. 797.02, F.S., which is being repealed in s. 14 of the bill. It is also a first degree misdemeanor to fail to provide notice in advertisements that the abortion clinic is prohibited from performing abortions in the third trimester or after the fetus has attained viability.

The AHCA is required to report, prior to each regular legislative session, aggregate statistical data that relates to abortions and does not contain any personal identifying information, which has been reported to the Division of Reproductive Health within the CDC, on its website. In addition, the AHCA must submit such information in an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3 amends s. 390.01114, F.S., to make conforming changes and to delete the definition of "medical emergency," which has been moved to s. 390.011(8), F.S., in the bill.

Section 4 amends s. 390.0112, F.S., to require the director of any hospital, validly licensed abortion clinic, or physician's office in which an abortion is performed to submit a report to the AHCA each month. The report must be on a form developed by the AHCA which is consistent with the U.S. Standard Report of Induced Termination of Pregnancy from the CDC. The AHCA is required to submit this reported information to the Division of Reproductive Health within the CDC. The bill authorizes the AHCA to adopt rules to administer this section.

Section 5 amends s. 390.012, F.S., to require the AHCA to adopt rules to prescribe standards for advertisements used by an abortion clinic by requiring the clinic to provide conspicuous notice on its premises and on its advertisements that it is prohibited from performing abortions in the third trimester or after viability of the fetus.

Section 6 amends s. 390.014, F.S., to incorporate the existing requirement contained in s. 797.03(2), F.S., that each abortion clinic hold a valid and current license. The bill requires abortion clinics to be wholly owned and operated by one or more physicians with residency training in dilation-and-curettage[36] and dilation-and-evacuation[37] procedures or by a professional corporation or limited liability company composed solely of one or more such physicians. This requirement does not apply to clinics licensed before July 1, 2012, or to the renewal of licenses held by such clinics. The willful violation of these licensure requirements is a first-degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. (maximum imprisonment of 1 year or maximum fine of $1,000).

Section 7 amends s. 390.018, F.S., to increase the fine that the AHCA may impose on abortion clinics for certain violations from $1,000 to $5,000.

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[36] Dilation-and-curettage is a medical procedure in which the uterine cervix is dilated and a curette is inserted into the uterus to scrape away the endometrium, also known as a D&C. Merriam-Webster, MedlinePlus Medical Dictionary, available at: <http://www.merriam-webster.com/medlineplus/dilation-and-curettage> (Last visited on February 15, 2012).

[37] Dilation-and-evacuation is a surgical abortion that is typically performed midway during the second trimester of pregnancy and in which the uterine cervix is dilated and fetal tissue is removed using surgical instruments and suction, also called a D&E. Merriam-Webster, MedlinePlus Medical Dictionary, available at: <http://www.merriam-webster.com/medlineplus/dilation-and-evacuation%20> (Last visited on February 15, 2012).

Section 8 amends s. 456.013, F.S., to require physicians who offer to perform or perform abortions in an abortion clinic to annually complete a 3-hour course related to ethics as part of the licensure and renewal process as required in section 2 of the bill. This section clarifies that the 3-hour course must count toward the total number of continuing education hours required for the profession and the applicable board, or department if there is no board, must approve of the course.

Section 9 amends s. 765.113, F.S., relating to health care surrogates or proxies, to conform a cross-reference to reflect the movement of the definition of "viability" in the bill.

Sections 10-13 repeal ss. 782.30-782.36, F.S., the Partial-Birth Abortion Act, which has been held unconstitutional by federal trial courts in Florida.

Section 14 repeals s. 797.02, F.S., the provisions of which are transferred to ch. 390, F.S., in section 2 of the bill.

Section 15 repeals s. 797.03, F.S., the provisions of which are transferred to ch. 390, F.S., in section 2 of the bill.

Section 16 is an undesignated section of law that provides for the severability of any provision in the bill that is held invalid.

Section 17 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

If the bill, should it become law, is challenged as an invasion of privacy, it will be subject to a strict scrutiny review, rather than that of an undue burden test pursuant to *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*,[38] as

[38] 866 So. 2d 612 (Fla. 2003).

discussed above under the subheading, "Relevant Case Law." Otherwise, any challenge that does not impinge on a constitutional fundamental right will be subject to the "undue burden" standard announced in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[39]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Abortion clinics may incur indeterminate costs associated with complying with the advertisement requirements, ownership requirements, and report requirements provided for in the bill.

C. Government Sector Impact:

The Department of Health will experience a recurring increase in workload associated with auditing physicians specified in the bill to ensure compliance with completion of a 3 hour ethics course annually and with additional complaints and investigations due to non-compliance. The department indicates that current resources are adequate to absorb these costs.

The AHCA expects a total of 80,000 individual reports of abortions to be submitted annually as a result of this bill. The agency's Office of Information Technology will need to update the current reporting system or develop a new system that will collect the additional data elements (age in years of the woman, gestational age in weeks at the time of abortion, race, ethnicity, method used, marital status, number of previous live births, number of previous abortions, and location of residence) and develop reports that will provide the information which is requested by the CDC. The AHCA estimates the cost to comply with the requirements of the bill to be $50,000. A $50,000 appropriation from the Health Care Trust Fund would be required to implement the bill. No appropriation is provided in the bill.

The Office of State Courts Administrator indicates that the bill would have little direct impact on either judicial time or court workload, except as necessary to ensure judges are familiar with changes in the law.

VI. Technical Deficiencies:

On line 350, the word "cause" should be "caused."

On line 395, the word "department" should be replaced with "board, or the department if there is no board." Sections 456.072, 458.331, and 459.015, F.S., give the authority to the respective

[39] 505 U.S. 833 (1992).

boards to impose discipline, particularly revocation. The only time the department handles licensure or disciplinary issues is when there is no board.

VII. Related Issues:

On line 351, the bill retains existing statutory language relating to a partial-birth abortion that is necessary to save the life of the mother, which is not included in the federal partial-birth abortion ban. The specific statutory language that is retained is "no other medical procedure would suffice for that purpose."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.