

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

29 award of attorney fees in certain circumstances;
 30 requiring confidentiality in court proceedings
 31 consistent with the Rules of Judicial Administration;
 32 conforming cross-references; amending s. 765.113,
 33 F.S.; conforming a cross-reference; requiring
 34 rulemaking by the Department of Health by a specified
 35 date; providing an effective date.

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

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

41 Section 2. The Legislature finds that:

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

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

49 (3) Anesthesia is routinely administered to unborn
 50 children who have developed 20 weeks or more past fertilization
 51 who undergo prenatal surgery.

52 (4) Even before 20 weeks after fertilization, unborn
 53 children have been observed to exhibit hormonal stress responses
 54 to painful stimuli. Such responses were reduced when pain
 55 medication was administered directly to such unborn children.

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

60 Section 3. Section 390.011, Florida Statutes, is amended
 61 to read:

62 390.011 Definitions.—As used in this chapter, the term:

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

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

68 (a) A hospital; or

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

71 (3) "Agency" means the Agency for Health Care
 72 Administration.

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

78 ~~(5)-(4)~~ "Department" means the Department of Health.

79 (6) "Fertilization" means the fusion of a human
 80 spermatozoon with a human ovum.

81 ~~(7)-(5)~~ "Hospital" means a facility as defined in s.
 82 395.002(12) and licensed under chapter 395 and part II of
 83 chapter 408.

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

94 (9)~~(6)~~ "Partial-birth abortion" means a termination of
95 pregnancy in which the physician performing the termination of
96 pregnancy partially vaginally delivers a living fetus before
97 killing the fetus and completing the delivery.

98 (10)~~(7)~~ "Physician" means a physician licensed under
99 chapter 458 or chapter 459 or a physician practicing medicine or
100 osteopathic medicine in the employment of the United States.

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

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

107 (13) "Reasonable medical judgment" means a medical
108 judgment that would be made by a reasonably prudent physician,
109 knowledgeable about the case and the treatment possibilities
110 with respect to the medical conditions involved.

111 (14)~~(8)~~ "Third trimester" means the weeks of pregnancy

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112 after the 24th week of pregnancy.

113 (15) "Unborn child" or "fetus" means an individual
114 organism of the species homo sapiens from fertilization until
115 live birth.

116 Section 4. A new subsection (1) is added to section
117 390.0111, Florida Statutes, subsections (1) through (13) of that
118 section are renumbered as subsections (2) through (14),
119 respectively, and present subsection (10) and paragraph (b) of
120 present subsection (11) of that section are amended, to read:

121 390.0111 Termination of pregnancies.—

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

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

136 2. Failure by any physician to conform to any requirement
137 of this paragraph constitutes grounds for disciplinary action
138 under s. 458.331 or s. 459.015.

139 (b) A person may not perform or induce or attempt to

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140 perform or induce an abortion upon a woman when it has been
141 determined, by the physician performing or inducing the abortion
142 or by another physician upon whose determination that physician
143 relies, that the probable postfertilization age of the woman's
144 unborn child is 20 or more weeks unless, in reasonable medical
145 judgment she has a condition that so complicates her medical
146 condition as to necessitate the abortion of her pregnancy to
147 avert her death or to avert serious risk of substantial and
148 irreversible physical impairment of a major bodily function.
149 Such a condition may not be deemed to exist if it is based on a
150 claim or diagnosis that the woman will engage in conduct that
151 would result in her death or in substantial and irreversible
152 physical impairment of a major bodily function. With respect to
153 this exception, the physician shall terminate the pregnancy in
154 the manner that, in reasonable medical judgment, provides the
155 best opportunity for the unborn child to survive, unless, in
156 reasonable medical judgment, termination of the pregnancy in
157 that manner would pose a greater risk either of the death of the
158 pregnant woman or of the substantial and irreversible physical
159 impairment of a major bodily function of the woman than would
160 another available method. Such greater risk may not be deemed to
161 exist if it is based on a claim or diagnosis that the woman will
162 engage in conduct that would result in her death or in
163 substantial and irreversible physical impairment of a major
164 bodily function.

165 (c) Any physician who performs or induces or attempts to
166 perform or induce an abortion shall report to the department, on
167 a schedule and in accordance with forms and rules and

168 regulations adopted by the department, the following:

169 1. If a determination of probable postfertilization age
170 was made, the probable postfertilization age determined and the
171 method and basis of the determination.

172 2. If a determination of probable postfertilization age
173 was not made, the basis of the determination that a medical
174 emergency existed.

175 3. If the probable postfertilization age was determined to
176 be 20 or more weeks, the basis of the determination that the
177 pregnant woman had a condition that so complicated her medical
178 condition as to necessitate the abortion of her pregnancy to
179 avert her death or to avert serious risk of substantial and
180 irreversible physical impairment of a major bodily function, or
181 the basis of the determination that it was necessary to preserve
182 the life of an unborn child.

183 4. The method used for the abortion and, in the case of an
184 abortion performed when the probable postfertilization age was
185 determined to be 20 or more weeks, whether the method of
186 abortion used was one that, in reasonable medical judgment,
187 provided the best opportunity for the unborn child to survive
188 or, if such a method was not used, the basis of the
189 determination that termination of the pregnancy in that manner
190 would pose a greater risk either of the death of the pregnant
191 woman or of the substantial and irreversible physical impairment
192 of a major bodily function of the woman than would other
193 available methods.

194 (d) By June 30 of each year, the department shall issue a
195 public report providing statistics for the previous calendar

196 year compiled from all of the reports covering that year
197 submitted in accordance with paragraph (c). Each such report
198 shall also provide the statistics for all previous calendar
199 years during which this subsection was in effect, adjusted to
200 reflect any additional information from late or corrected
201 reports. The department shall take care to ensure that none of
202 the information included in the public reports could reasonably
203 lead to the identification of any pregnant woman upon whom an
204 abortion was performed.

205 (e) Any physician who fails to submit a report under
206 paragraph (c) by the end of 30 days after the due date shall be
207 subject to a late fee of \$500 for each additional 30-day period
208 or portion of a 30-day period the report is overdue. Any
209 physician required to report in accordance with this subsection
210 who has not submitted a report, or has submitted only an
211 incomplete report, more than 1 year after the due date, may be
212 directed by a court of competent jurisdiction to submit a
213 complete report within a time period stated by court order or be
214 subject to civil contempt. Failure by any physician to conform
215 to any requirement of this subsection constitutes grounds for
216 disciplinary action under s. 458.331 or s. 459.015. Intentional
217 or reckless falsification of any report required under paragraph
218 (c) is a misdemeanor of the second degree, punishable as
219 provided in s. 775.082 or s. 775.083.

220 (f) Any person who intentionally or recklessly performs or
221 attempts to perform an abortion in violation of paragraph (b)
222 commits a felony of the third degree, punishable as provided in
223 s. 775.082, s. 775.083, or s. 775.084. A penalty may not be

224 assessed against the woman upon whom the abortion was performed
 225 or attempted to be performed.

226 (g)1. Any woman upon whom an abortion was performed in
 227 violation of this subsection or the father of the unborn child
 228 who was the subject of such an abortion may maintain an action
 229 against the person who performed the abortion in an intentional
 230 or a reckless violation of this subsection for actual damages.
 231 Any woman upon whom an abortion was attempted in violation of
 232 this subsection may maintain an action against the person who
 233 attempted to perform the abortion in an intentional or a
 234 reckless violation of this subsection for actual damages.

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

245 3. If judgment is rendered in favor of the plaintiff in an
 246 action described in this section, the court shall also render
 247 judgment for reasonable attorney fees in favor of the plaintiff
 248 against the defendant.

249 4. If judgment is rendered in favor of the defendant and
 250 the court finds that the plaintiff's suit was frivolous and
 251 brought in bad faith, the court shall also render judgment for

252 reasonable attorney fees in favor of the defendant against the
 253 plaintiff.

254 5. Neither damages nor attorney fees may be assessed
 255 against the woman upon whom an abortion was performed or
 256 attempted except as provided in subparagraph 4.

257 (h) In every civil or criminal proceeding or action
 258 brought under this subsection, upon request of any woman upon
 259 whom an abortion was performed or attempted, the court shall
 260 determine whether the anonymity of such woman may be preserved
 261 from public disclosure consistent with Rule 2.420 of the Florida
 262 Rules of Judicial Administration. In the absence of written
 263 consent of the woman upon whom an abortion was performed or
 264 attempted, anyone, other than a public official, who brings an
 265 action under paragraph (g) shall file such action under a
 266 pseudonym.

267 (11)-(10) PENALTIES FOR VIOLATION.—Except as provided in
 268 subsections (1), (4), (3) and (8) (7):

269 (a) Any person who willfully performs, or actively
 270 participates in, a termination of pregnancy procedure in
 271 violation of the requirements of this section commits a felony
 272 of the third degree, punishable as provided in s. 775.082, s.
 273 775.083, or s. 775.084.

274 (b) Any person who performs, or actively participates in,
 275 a termination of pregnancy procedure in violation of the
 276 provisions of this section which results in the death of the
 277 woman commits a felony of the second degree, punishable as
 278 provided in s. 775.082, s. 775.083, or s. 775.084.

279 (12)-(11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;

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280 RELIEF.—

281 (b) In a civil action under this section, appropriate
282 relief includes:

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

285 2. Damages equal to three times the cost of the partial-
286 birth abortion.

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

289 765.113 Restrictions on providing consent.—Unless the
290 principal expressly delegates such authority to the surrogate in
291 writing, or a surrogate or proxy has sought and received court
292 approval pursuant to rule 5.900 of the Florida Probate Rules, a
293 surrogate or proxy may not provide consent for:

294 (2) Withholding or withdrawing life-prolonging procedures
295 from a pregnant patient prior to viability as defined in s.
296 390.0111~~(5)~~~~(4)~~.

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

302 Section 7. This act shall take effect July 1, 2012.