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CS/HB 1047

2014 Legislature

1
2 An act relating to the termination of pregnancies;
3 amending s. 390.011, F.S.; defining the terms
4 "reasonable medical judgment," "standard medical
5 measure," and "viability"; amending s. 390.0111, F.S.;
6 revising the circumstances under which a pregnancy in
7 the third trimester may be terminated; providing the
8 standard of medical care for the termination of a
9 pregnancy during the third trimester; providing
10 criminal penalties for a violation of s. 390.01112,
11 F.S.; authorizing administrative discipline for a
12 violation of s. 390.01112, F.S., by certain licensed
13 professionals; creating s. 390.01112, F.S.;
14 prohibiting the termination of a viable fetus;
15 providing exceptions; requiring a physician to perform
16 certain examinations to determine the viability of a
17 fetus; providing the standard of care for the
18 termination of a viable fetus; amending s. 797.03,
19 F.S.; prohibiting an abortion of a viable fetus
20 outside of a hospital; providing for severability;
21 providing for a contingent future repeal and reversion
22 of law; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (9) of section 390.011, Florida

ENROLLED

CS/HB 1047

2014 Legislature

27 Statutes, is renumbered as subsection (11), and new subsections
 28 (9), (10), and (12) are added to that section, to read:

29 390.011 Definitions.—As used in this chapter, the term:

30 (9) "Reasonable medical judgment" means a medical judgment
 31 that would be made by a reasonably prudent physician,
 32 knowledgeable about the case and the treatment possibilities
 33 with respect to the medical conditions involved.

34 (10) "Standard medical measure" means the medical care
 35 that a physician would provide based on the particular facts of
 36 the pregnancy, the information available to the physician, and
 37 the technology reasonably available in a hospital, as defined in
 38 s. 395.002, with an obstetrical department, to preserve the life
 39 and health of the fetus, with or without temporary artificial
 40 life-sustaining support, if the fetus were born at the same
 41 stage of fetal development.

42 (12) "Viable" or "viability" means the stage of fetal
 43 development when the life of a fetus is sustainable outside the
 44 womb through standard medical measures.

45 Section 2. Subsections (1), (4), (10), and (13) of section
 46 390.0111, Florida Statutes, are amended to read:

47 390.0111 Termination of pregnancies.—

48 (1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.—No
 49 termination of pregnancy shall be performed on any human being
 50 in the third trimester of pregnancy unless one of the following
 51 conditions is met:

52 (a) Two physicians certify in writing ~~to the fact that,~~ in

ENROLLED

CS/HB 1047

2014 Legislature

53 reasonable medical judgment ~~to a reasonable degree of medical~~
 54 ~~probability,~~ the termination of the pregnancy is necessary to
 55 save the pregnant woman's life or avert a serious risk of
 56 substantial and irreversible physical impairment of a major
 57 bodily function of the pregnant woman other than a psychological
 58 condition. ~~or preserve the health of the pregnant woman; or~~

59 (b) The physician certifies in writing that, in reasonable
 60 medical judgment, there is a ~~to the~~ medical necessity for
 61 legitimate emergency medical procedures for termination of the
 62 pregnancy to save the pregnant woman's life or avert a serious
 63 risk of imminent substantial and irreversible physical
 64 impairment of a major bodily function of the pregnant woman
 65 other than a psychological condition ~~in the third trimester,~~ and
 66 another physician is not available for consultation.

67 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER
 68 DURING VIABILITY.—If a termination of pregnancy is performed in
 69 the third trimester, the physician performing ~~during viability,~~
 70 ~~no person who performs or induces~~ the termination of pregnancy
 71 must exercise the same ~~shall fail to use that~~ degree of
 72 professional skill, care, and diligence to preserve the life and
 73 health of the fetus which the physician ~~such person~~ would be
 74 required to exercise in order to preserve the life and health of
 75 a any fetus intended to be born and not aborted. However, if
 76 preserving the life and health of the fetus conflicts with
 77 preserving the life and health of the pregnant woman, the
 78 physician must consider preserving the woman's life and health

ENROLLED

CS/HB 1047

2014 Legislature

79 ~~the overriding and superior concern "Viability" means that stage~~
 80 ~~of fetal development when the life of the unborn child may with~~
 81 ~~a reasonable degree of medical probability be continued~~
 82 ~~indefinitely outside the womb. Notwithstanding the provisions of~~
 83 ~~this subsection, the woman's life and health shall constitute an~~
 84 ~~overriding and superior consideration to the concern for the~~
 85 ~~life and health of the fetus when such concerns are in conflict.~~

86 (10) PENALTIES FOR VIOLATION.—Except as provided in
 87 subsections (3), (7), and (12):

88 (a) Any person who willfully performs, or actively
 89 participates in, a termination of pregnancy ~~procedure~~ in
 90 violation of the requirements of this section or s. 390.01112
 91 commits a felony of the third degree, punishable as provided in
 92 s. 775.082, s. 775.083, or s. 775.084.

93 (b) Any person who performs, or actively participates in,
 94 a termination of pregnancy ~~procedure~~ in violation of ~~the~~
 95 ~~provisions of~~ this section or s. 390.01112 which results in the
 96 death of the woman commits a felony of the second degree,
 97 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

98 (13) FAILURE TO COMPLY.—Failure to comply with the
 99 requirements of this section or s. 390.01112 constitutes grounds
 100 for disciplinary action under each respective practice act and
 101 under s. 456.072.

102 Section 3. Section 390.01112, Florida Statutes, is created
 103 to read:

104 390.01112 Termination of pregnancies during viability.—

ENROLLED

CS/HB 1047

2014 Legislature

105 (1) No termination of pregnancy shall be performed on any
106 human being if the physician determines that, in reasonable
107 medical judgment, the fetus has achieved viability, unless:

108 (a) Two physicians certify in writing that, in reasonable
109 medical judgment, the termination of the pregnancy is necessary
110 to save the pregnant woman's life or avert a serious risk of
111 substantial and irreversible physical impairment of a major
112 bodily function of the pregnant woman other than a psychological
113 condition; or

114 (b) The physician certifies in writing that, in reasonable
115 medical judgment, there is a medical necessity for legitimate
116 emergency medical procedures for termination of the pregnancy to
117 save the pregnant woman's life or avert a serious risk of
118 imminent substantial and irreversible physical impairment of a
119 major bodily function of the pregnant woman other than a
120 psychological condition, and another physician is not available
121 for consultation.

122 (2) Before performing a termination of pregnancy, a
123 physician must determine if the fetus is viable by, at a
124 minimum, performing a medical examination of the pregnant woman
125 and, to the maximum extent possible through reasonably available
126 tests and the ultrasound required under s. 390.0111(3), an
127 examination of the fetus. The physician must document in the
128 pregnant woman's medical file the physician's determination and
129 the method, equipment, fetal measurements, and any other
130 information used to determine the viability of the fetus.

ENROLLED

CS/HB 1047

2014 Legislature

131 (3) If a termination of pregnancy is performed during
 132 viability, the physician performing the termination of pregnancy
 133 must exercise the same degree of professional skill, care, and
 134 diligence to preserve the life and health of the fetus that the
 135 physician would be required to exercise in order to preserve the
 136 life and health of a fetus intended to be born and not aborted.
 137 However, if preserving the life and health of the fetus
 138 conflicts with preserving the life and health of the woman, the
 139 physician must consider preserving the woman's life and health
 140 the overriding and superior concern.

141 Section 4. Subsection (3) of section 797.03, Florida
 142 Statutes, is amended to read:

143 797.03 Prohibited acts; penalties.—

144 (3) It is unlawful for any person to perform or assist in
 145 performing an abortion on a person during viability or in the
 146 third trimester other than in a hospital.

147 Section 5. Severability and reversion.—

148 (1) If any provision of this act or its application to any
 149 person or circumstance is held invalid, the invalidity does not
 150 affect other provisions or applications of this act which can be
 151 given effect without the invalid provision or application, and
 152 to this end the provisions of this act are severable.

153 (2) Notwithstanding subsection (1), if s. 390.01112,
 154 Florida Statutes, is held unconstitutional and severed by a
 155 court having jurisdiction, the amendments made by this act to s.
 156 390.011, Florida Statutes, and subsections (4), (10), and (13)

ENROLLED

CS/HB 1047

2014 Legislature

157 | of s. 390.0111, Florida Statutes, will be repealed and will
158 | revert to the law as it existed on January 1, 2014.

159 | Section 6. This act shall take effect July 1, 2014.