

By the Committee on Health Policy; and Senators Flores and Benacquisto

588-03595-14

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

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

26
27 Section 1. Present subsection (9) of section 390.011,
28 Florida Statutes, is redesignated as subsection (11) and new
29 subsections (9), (10) and (12) are added to that section, to

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30 read:

31 390.011 Definitions.—As used in this chapter, the term:

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

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

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

47 Section 2. Subsections (1), (4), (10), and (13) of section
48 390.0111, Florida Statutes, are amended to read:

49 390.0111 Termination of pregnancies.—

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

54 (a) Two physicians certify in writing ~~to the fact that, in~~
55 reasonable medical judgment ~~to a reasonable degree of medical~~
56 ~~probability,~~ the termination of the pregnancy is necessary to
57 save the pregnant woman's life or avert a serious risk of
58 substantial and irreversible physical impairment of a major

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59 bodily function of the pregnant woman other than a psychological
60 condition. ~~or preserve the health of the pregnant woman; or~~

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

69 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER
70 DURING VIABILITY.—If a termination of pregnancy is performed in
71 the third trimester, the physician performing during viability,
72 ~~no person who performs or induces the termination of pregnancy~~
73 must exercise the same ~~shall fail to use that~~ degree of
74 professional skill, care, and diligence to preserve the life and
75 health of the fetus which the physician ~~such person~~ would be
76 required to exercise in order to preserve the life and health of
77 a any fetus intended to be born and not aborted. However, if
78 preserving the life and health of the fetus conflicts with
79 preserving the life and health of the pregnant woman, the
80 physician must consider preserving the woman's life and health
81 the overriding and superior concern "Viability" ~~means that stage~~
82 ~~of fetal development when the life of the unborn child may with~~
83 ~~a reasonable degree of medical probability be continued~~
84 ~~indefinitely outside the womb. Notwithstanding the provisions of~~
85 ~~this subsection, the woman's life and health shall constitute an~~
86 ~~overriding and superior consideration to the concern for the~~
87 ~~life and health of the fetus when such concerns are in conflict.~~

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

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

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

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

104 Section 3. Section 390.01112, Florida Statutes, is created
105 to read:

106 390.01112 Termination of pregnancies during viability.—

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

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

116 (b) The physician certifies in writing that, in reasonable

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117 medical judgment, there is a medical necessity for legitimate
118 emergency medical procedures for termination of the pregnancy to
119 save the pregnant woman's life or avert a serious risk of
120 imminent substantial and irreversible physical impairment of a
121 major bodily function of the pregnant woman other than a
122 psychological condition, and another physician is not available
123 for consultation.

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

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

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

145 797.03 Prohibited acts; penalties.—

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

149 Section 5. Severability and reversion.—

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

155 (2) Notwithstanding subsection (1), if s. 390.01112,
156 Florida Statutes, is held unconstitutional and severed by a
157 court having jurisdiction, the amendments made by this act to s.
158 390.011, Florida Statutes, and subsections (4), (10), and (13)
159 of s. 390.0111, Florida Statutes, will be repealed and will
160 revert to the law as it existed on January 1, 2014.

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