

By the Committee on Fiscal Policy; and Senator Stargel

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1 A bill to be entitled
2 An act relating to termination of pregnancies;
3 amending s. 390.011, F.S.; defining the term
4 "gestation" and revising the term "third trimester";
5 amending s. 390.0111, F.S.; revising the requirements
6 for disposal of fetal remains; revising the criminal
7 punishment for failure to properly dispose of fetal
8 remains; prohibiting state agencies, local
9 governmental entities, and Medicaid managed care plans
10 from expending or paying funds to or initiating or
11 renewing contracts under certain circumstances with
12 certain organizations that perform abortions;
13 providing exceptions; amending s. 390.0112, F.S.;
14 requiring directors of certain hospitals and
15 physicians' offices and licensed abortion clinics to
16 submit monthly reports to the Agency for Health Care
17 Administration on a specified form; prohibiting the
18 report from including personal identifying
19 information; requiring the agency to submit certain
20 data to the Centers for Disease Control and Prevention
21 on a quarterly basis; amending s. 390.012, F.S.;
22 requiring the agency to develop and enforce rules
23 relating to license inspections and investigations of
24 certain clinics; requiring the agency to adopt rules
25 that require certain clinics to have written
26 agreements with local hospitals for certain
27 contingencies; specifying that the rules must require
28 physicians who perform abortions at a clinic that
29 performs abortions in the first trimester of pregnancy
30 to have admitting privileges at a hospital within
31 reasonable proximity of the clinic; specifying for
32 clinics that perform or claim to perform abortions

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33 after the first trimester of pregnancy that the rules
34 must require all physicians performing abortions at
35 the clinic to have admitting privileges at a hospital
36 within a reasonable proximity unless the clinic has a
37 transfer agreement with such a hospital and the
38 agreement includes certain provisions; revising
39 requirements for rules that prescribe minimum recovery
40 room standards; revising requirements for the disposal
41 of fetal remains; requiring the agency to submit an
42 annual report to the Legislature; amending s. 390.014,
43 F.S.; providing a different limitation on the amount
44 of a fee; amending s. 390.025, F.S.; requiring certain
45 organizations that provide abortion referral services
46 or abortion counseling services to register with the
47 agency, pay a specified fee, and include certain
48 information in advertisements; requiring biennial
49 renewal of a registration; providing exemptions from
50 the registration requirement; requiring the agency to
51 adopt rules; providing for the assessment of costs in
52 certain circumstances; amending s. 873.05, F.S.;

53 prohibiting an offer to purchase, sell, donate, or
54 transfer fetal remains obtained from an abortion and
55 the purchase, sale, donation, or transfer of such
56 remains, excluding costs associated with certain
57 transportation of remains; providing effective dates.

58
59 Be It Enacted by the Legislature of the State of Florida:

60
61 Section 1. Present subsections (6) through (12) of section

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62 390.011, Florida Statutes, are redesignated as subsections (7)
63 through (13), respectively, a new subsection (6) is added to
64 that section, and present subsection (11) of that section is
65 amended, to read:

66 390.011 Definitions.—As used in this chapter, the term:

67 (6) "Gestation" means the development of a human embryo or
68 fetus between fertilization and birth.

69 (12) ~~(11)~~ "Third Trimester" means one of the following three
70 distinct periods of time in the duration of a pregnancy:

71 (a) "First trimester," which is the period of time from
72 fertilization through the end of the 11th week of gestation.

73 (b) "Second trimester," which is the period of time from
74 the beginning of the 12th week of gestation through the end of
75 the 23rd week of gestation.

76 (c) "Third trimester," which is the period of time from the
77 beginning of the 24th week of gestation through birth ~~the weeks~~
78 of pregnancy after the 24th week of pregnancy.

79 Section 2. Subsection (7) of section 390.0111, Florida
80 Statutes, is amended, and subsection (15) is added to that
81 section, to read:

82 390.0111 Termination of pregnancies.—

83 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a
84 sanitary ~~and appropriate~~ manner pursuant to s. 381.0098 and
85 rules adopted thereunder and in accordance with standard health
86 practices, as provided by rule of the Department of Health.
87 Failure to dispose of fetal remains in accordance with this
88 subsection ~~department rules~~ is a misdemeanor of the first ~~second~~
89 degree, punishable as provided in s. 775.082 or s. 775.083.

90 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a

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91 local governmental entity, or a managed care plan providing
92 services under part IV of chapter 409 may not expend funds for
93 the benefit of, pay funds to, or initiate or renew a contract
94 with an organization that owns, operates, or is affiliated with
95 one or more clinics that are licensed under this chapter and
96 perform abortions unless one or more of the following applies:

97 (a) All abortions performed by such clinics are:

98 1. On fetuses that are conceived through rape or incest; or

99 2. Are medically necessary to preserve the life of the
100 pregnant woman or to avert a serious risk of substantial and
101 irreversible physical impairment of a major bodily function of
102 the pregnant woman, other than a psychological condition.

103 (b) The funds must be expended to fulfill the terms of a
104 contract entered into before July 1, 2016.

105 (c) The funds must be expended as reimbursement for
106 Medicaid services provided on a fee-for-service basis.

107 Section 3. Subsection (1) of section 390.0112, Florida
108 Statutes, is amended, present subsections (2), (3), and (4) of
109 that section are redesignated as subsections (3), (4), and (5),
110 respectively, and a new subsection (2) is added to that section,
111 to read:

112 390.0112 Termination of pregnancies; reporting.-

113 (1) The director of any medical facility in which abortions
114 are performed, including a physician's office, ~~any pregnancy is~~
115 ~~terminated~~ shall submit a ~~monthly~~ report each month to the
116 agency. The report may be submitted electronically, may not
117 include personal identifying information, and must include:

118 (a) Until the agency begins collecting data under paragraph
119 (e), the number of abortions performed.

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120 (b) The reasons such abortions were performed.

121 (c) For each abortion, the period of gestation at the time
122 the abortion was performed.

123 ~~(d) which contains the number of procedures performed, the~~
124 ~~reason for same, the period of gestation at the time such~~
125 ~~procedures were performed, and~~ The number of infants born alive
126 or alive during or immediately after an attempted abortion.

127 (e) Beginning no later than January 1, 2017, information
128 consistent with the United States Standard Report of Induced
129 Termination of Pregnancy adopted by the Centers for Disease
130 Control and Prevention.

131 (2) The agency shall keep ~~be responsible for keeping~~ such
132 reports in a central location for the purpose of compiling and
133 analyzing ~~place from which~~ statistical data and shall submit
134 data reported pursuant to paragraph (1)(e) to the Division of
135 Reproductive Health within the Centers for Disease Control and
136 Prevention, as requested by the Centers for Disease Control and
137 Prevention ~~analysis can be made.~~

138 Section 4. Paragraph (c) of subsection (1), subsection (2),
139 paragraphs (c) and (f) of subsection (3), and subsection (7) of
140 section 390.012, Florida Statutes, are amended, and subsection
141 (8) is added to that section, to read:

142 390.012 Powers of agency; rules; disposal of fetal
143 remains.—

144 (1) The agency may develop and enforce rules pursuant to
145 ss. 390.011-390.018 and part II of chapter 408 for the health,
146 care, and treatment of persons in abortion clinics and for the
147 safe operation of such clinics.

148 (c) The rules shall provide for:

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149 1. The performance of pregnancy termination procedures only
150 by a licensed physician.

151 2. The making, protection, and preservation of patient
152 records, which shall be treated as medical records under chapter
153 458. When performing a license inspection of a clinic, the
154 agency shall inspect at least 50 percent of patient records
155 generated since the clinic's last license inspection.

156 3. Annual inspections by the agency of all clinics licensed
157 under this chapter to ensure that such clinics are in compliance
158 with this chapter and agency rule.

159 4. The prompt investigation of credible allegations of
160 abortions being performed at a clinic that is not licensed to
161 perform such procedures.

162 (2) For clinics that perform abortions in the first
163 trimester of pregnancy only, these rules must ~~shall~~ be
164 comparable to rules that apply to all surgical procedures
165 requiring approximately the same degree of skill and care as the
166 performance of first trimester abortions and must require:

167 (a) Clinics to have a written patient transfer agreement
168 with a hospital within reasonable proximity to the clinic which
169 includes the transfer of the patient's medical records held by
170 the clinic and the treating physician to the licensed hospital;
171 or

172 (b) Physicians who perform abortions at the clinic to have
173 admitting privileges at a hospital within reasonable proximity
174 to the clinic.

175 (3) For clinics that perform or claim to perform abortions
176 after the first trimester of pregnancy, the agency shall adopt
177 rules pursuant to ss. 120.536(1) and 120.54 to implement the

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178 provisions of this chapter, including the following:

179 (c) Rules relating to abortion clinic personnel. At a
180 minimum, these rules shall require that:

181 1. The abortion clinic designate a medical director who is
182 licensed to practice medicine in this state, and all physicians
183 who perform abortions in the clinic have ~~who has~~ admitting
184 privileges at a ~~licensed~~ hospital in this state within
185 reasonable proximity of the clinic, unless the clinic ~~or~~ has a
186 written patient transfer agreement with a ~~licensed~~ hospital
187 within reasonable proximity of the clinic which includes the
188 transfer of the patient's medical records held by both the
189 clinic and the treating physician.

190 2. If a physician is not present after an abortion is
191 performed, a registered nurse, licensed practical nurse,
192 advanced registered nurse practitioner, or physician assistant
193 ~~shall~~ be present and remain at the clinic to provide
194 postoperative monitoring and care until the patient is
195 discharged.

196 3. Surgical assistants receive training in counseling,
197 patient advocacy, and the specific responsibilities associated
198 with the services the surgical assistants provide.

199 4. Volunteers receive training in the specific
200 responsibilities associated with the services the volunteers
201 provide, including counseling and patient advocacy as provided
202 in the rules adopted by the director for different types of
203 volunteers based on their responsibilities.

204 (f) Rules that prescribe minimum recovery room standards.
205 At a minimum, these rules must ~~shall~~ require that:

206 1. Postprocedure recovery rooms be ~~are~~ supervised and

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207 staffed to meet the patients' needs.

208 2. Immediate postprocedure care consist ~~consists~~ of
209 observation in a supervised recovery room for as long as the
210 patient's condition warrants.

211 3. ~~The clinic arranges hospitalization if any complication~~
212 ~~beyond the medical capability of the staff occurs or is~~
213 ~~suspected.~~

214 4. A registered nurse, licensed practical nurse, advanced
215 registered nurse practitioner, or physician assistant who is
216 trained in the management of the recovery area and is capable of
217 providing basic cardiopulmonary resuscitation and related
218 emergency procedures remain ~~remains~~ on the premises of the
219 abortion clinic until all patients are discharged.

220 ~~4.5.~~ A physician ~~shall~~ sign the discharge order and be
221 readily accessible and available until the last patient is
222 discharged to facilitate the transfer of emergency cases if
223 hospitalization of the patient or viable fetus is necessary.

224 ~~5.6.~~ A physician discuss ~~discusses~~ Rho(D) immune globulin
225 with each patient for whom it is indicated and ensure ~~ensures~~
226 that it is offered to the patient in the immediate postoperative
227 period or ~~that it~~ will be available to her within 72 hours after
228 completion of the abortion procedure. If the patient refuses the
229 Rho(D) immune globulin, she and a witness must sign a refusal
230 form approved by the agency which must be ~~shall be signed by the~~
231 ~~patient and a witness and~~ included in the medical record.

232 ~~6.7.~~ Written instructions with regard to postabortion
233 coitus, signs of possible problems, and general aftercare which
234 are specific to the patient be ~~are~~ given to each patient. The
235 instructions must include information ~~Each patient shall have~~

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236 ~~specific written instructions~~ regarding access to medical care
237 for complications, including a telephone number for use in the
238 event of a to call for medical emergency emergencies.

239 ~~7.8. There is~~ A ~~specified~~ minimum length of time be
240 specified, by type of abortion procedure and duration of
241 gestation, during which ~~that~~ a patient must remain ~~remains~~ in
242 the recovery room ~~by type of abortion procedure and duration of~~
243 ~~gestation.~~

244 ~~8.9. The physician~~ ensure ~~ensures~~ that, with the patient's
245 consent, a registered nurse, licensed practical nurse, advanced
246 registered nurse practitioner, or physician assistant from the
247 abortion clinic makes a good faith effort to contact the patient
248 by telephone, ~~with the patient's consent,~~ within 24 hours after
249 surgery to assess the patient's recovery.

250 ~~9.10. Equipment and services~~ be ~~are~~ readily accessible to
251 provide appropriate emergency resuscitative and life support
252 procedures pending the transfer of the patient or viable fetus
253 to the hospital.

254 (7) If an ~~any~~ owner, operator, or employee of an abortion
255 clinic fails to dispose of fetal remains and tissue in a
256 sanitary manner pursuant to s. 381.0098, rules adopted
257 thereunder, and rules adopted by the agency pursuant to this
258 section ~~consistent with the disposal of other human tissue in a~~
259 ~~competent professional manner,~~ the license of such clinic may be
260 suspended or revoked, and such person commits ~~is guilty of~~ a
261 misdemeanor of the first degree, punishable as provided in s.
262 775.082 or s. 775.083.

263 (8) Beginning February 1, 2017, and annually thereafter,
264 the agency shall submit a report to the President of the Senate

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265 and the Speaker of the House of Representatives which summarizes
266 all regulatory actions taken during the prior year by the agency
267 under this chapter.

268 Section 5. Subsection (3) of section 390.014, Florida
269 Statutes, is amended to read:

270 390.014 Licenses; fees.—

271 (3) In accordance with s. 408.805, an applicant or licensee
272 shall pay a fee for each license application submitted under
273 this chapter and part II of chapter 408. The amount of the fee
274 shall be established by rule and may not be more than required
275 to pay for the costs incurred by the agency in administering
276 this chapter ~~less than \$70 or more than \$500.~~

277 Section 6. Effective January 1, 2017, present subsection
278 (3) of section 390.025, Florida Statutes, is amended, a new
279 subsection (3) is added, and subsections (4) and (5) are added
280 to that section, to read:

281 390.025 Abortion referral or counseling agencies;
282 penalties.—

283 (3) An abortion referral or counseling agency, as defined
284 in subsection (1), shall register with the Agency for Health
285 Care Administration. To register or renew a registration an
286 applicant must pay an initial or renewal registration fee
287 established by rule, which must not exceed the costs incurred by
288 the agency in administering this section. Registrants must
289 include in any advertising materials the registration number
290 issued by the agency and must renew their registration
291 biennially.

292 (4) The following are exempt from the requirement to
293 register pursuant to subsection (3):

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294 (a) Facilities licensed pursuant to this chapter, chapter
295 395, chapter 400, or chapter 408;

296 (b) Facilities that are exempt from licensure as a clinic
297 as defined in s. 400.9905(4) and that refer five or fewer
298 patients for abortions per month; and

299 (c) Health care practitioners, as defined in s. 456.001,
300 who, in the course of their practice outside of a facility
301 licensed pursuant to this chapter, chapter 395, chapter 400, or
302 chapter 408, refer five or fewer patients for abortions each
303 month.

304 (5) The agency shall adopt rules to administer this section
305 and part II of chapter 408.

306 (6)~~(3)~~ Any person who violates the provisions of subsection
307 (2) this section is guilty of a misdemeanor of the first degree,
308 punishable as provided in s. 775.082 or s. 775.083. In addition
309 to any other penalties imposed pursuant to this chapter, the
310 Agency for Health Care Administration may assess costs related
311 to an investigation of violations of this section which results
312 in a successful prosecution. Such costs may not include attorney
313 fees.

314 Section 7. Section 873.05, Florida Statutes, is amended to
315 read:

316 873.05 Advertising, purchase, or sale, or transfer of human
317 embryos or fetal remains prohibited.-

318 (1) A ~~No~~ person may not shall knowingly advertise or offer
319 to purchase or sell, or purchase, sell, or otherwise transfer, a
320 any human embryo for valuable consideration.

321 ~~(2)~~ As used in this subsection ~~section~~, the term "valuable
322 consideration" does not include the reasonable costs associated

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323 with the removal, storage, and transportation of a human embryo.

324 (2) A person may not advertise or offer to purchase, sell,
325 donate, or transfer, or purchase, sell, donate, or transfer,
326 fetal remains obtained from an abortion, as defined in s.
327 390.011. This subsection does not prohibit the transportation or
328 transfer of fetal remains for disposal pursuant to s. 381.0098
329 or rules adopted thereunder.

330 (3) A person who violates ~~the provisions of~~ this section is
331 guilty of a felony of the second degree, punishable as provided
332 in s. 775.082, s. 775.083, or s. 775.084.

333 Section 8. Except as otherwise expressly provided in this
334 act, this act shall take effect July 1, 2016.