

By Senator Stargel

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1 A bill to be entitled
2 An act relating to termination of pregnancies;
3 creating s. 390.035, F.S.; creating a cause of action
4 for physical and emotional injury resulting from a
5 termination of pregnancy under certain circumstances;
6 providing that this cause of action is not an
7 exclusive remedy; providing that laws on medical
8 malpractice actions do not apply to this cause of
9 action; providing a statute of limitations for an
10 action for damages and statute of repose; providing
11 for tolling of the limitations periods; authorizing an
12 award of attorney fees and costs to a prevailing
13 plaintiff; defining the term "damages"; providing an
14 effective date.

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

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18 Section 1. Section 390.035, Florida Statutes, is created to
19 read:

20 390.035 Liability for acts related to a termination of
21 pregnancy; remedies; limitations.-

22 (1) A woman who suffers injury or death as a result of an
23 abortion, or who suffers emotional distress as a result of a
24 physician's failure to obtain the informed consent as required
25 by s. 390.0111, has a cause of action for damages against the
26 physician who performed the abortion or failed to provide the
27 statutorily required informed consent.

28 (2) The signing of a consent form by the woman prior to the
29 abortion shall not bar a cause of action brought under this

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30 section.

31 (3) This section may not be construed as barring any
32 statutory or common law cause of action for medical malpractice
33 otherwise available resulting from an abortion or as diminishing
34 the nature or the extent of those causes of action. The cause of
35 action created under this section is in addition to any other
36 statutory or common law cause of action available to an injured
37 person. An action brought under this section is not a claim for
38 medical malpractice under chapter 766. A woman who pursues an
39 action under this section is precluded from seeking redress for
40 injuries arising from the same abortion procedure under chapter
41 766.

42 (4) Notwithstanding s. 95.11 or any other provision of law,
43 an action for damages brought under this section shall be
44 commenced within the latter of 4 years from the time the
45 incident giving rise to the action occurred or 4 years from the
46 time the injury is discovered or should have been discovered
47 with the exercise of due diligence; however, in no event shall
48 the action be commenced later than 10 years from the time the
49 incident giving rise to the action occurred. The limitations
50 periods created by this subsection shall be tolled while the
51 woman is a minor.

52 (5) A prevailing plaintiff in an action brought under this
53 section is entitled to reasonable attorney fees and costs.

54 (6) For the purposes of this section, the term "damages"
55 means all special and general damages that are recoverable in an
56 intentional tort, negligence, survival, or wrongful death
57 action, including, but not limited to, actual and punitive
58 damages.

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Section 2. This act shall take effect July 1, 2017.