

CS/HB 321

2011

1 A bill to be entitled
2 An act relating to abortion; amending s. 390.0111, F.S.;
3 requiring a physician performing an abortion to, if the
4 gestational age of the fetus is determined to be 22 weeks
5 or more, provide specified information to the woman on
6 whom the procedure is to be performed; requiring a
7 physician to offer to administer an anesthetic or
8 analgesic to the fetus if an abortion is to be performed
9 on a fetus whose gestational age is 22 weeks or more;
10 providing an exception for medical emergency; providing
11 for civil actions by certain persons for violations of
12 specified provisions related to informed consent and fetal
13 anesthesia; providing for award of attorney's fees in
14 certain circumstances; providing that such an action is
15 not subject to specified medical malpractice provisions;
16 specifying an applicable statute of limitations; amending
17 s. 390.012, F.S.; providing for rulemaking concerning use
18 of general and local anesthesia in certain abortion
19 clinics for the pregnant woman and for the fetus;
20 providing an effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Subsections (9) through (11) of section
25 390.0111, Florida Statutes, are renumbered as subsections (10)
26 through (12), respectively, new subsections (9) and (13) are
27 added to that section, and subsection (3) of that section is
28 amended, to read:

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390.0111 Termination of pregnancies.—

(3) CONSENTS REQUIRED.—A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.

(a) Except in the case of a medical emergency, consent to a termination of pregnancy is voluntary and informed only if:

1. The physician who is to perform the procedure, or the referring physician, has, at a minimum, orally, in person, informed the woman of:

a. The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of whether to terminate a pregnancy.

b. The probable gestational age of the fetus at the time the termination of pregnancy is to be performed.

c. If the gestational age of the fetus is determined to be 22 weeks or more, the ability of the fetus to feel pain. This information shall include, but need not be limited to, the following:

(I) By 22 weeks gestational age, a fetus possesses all the anatomical structures, including pain receptors, spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order to feel pain.

(II) A description of the actual steps in the abortion procedure to be performed or induced, and at which steps the abortion procedure could be painful to the fetus.

57 (III) There is evidence that by 22 weeks of gestational
58 age, fetuses seek to evade certain stimuli in a manner that in
59 an infant or adult would be interpreted as a response to pain.

60 (IV) Anesthesia is given to fetuses who are 22 weeks or
61 more gestational age who undergo prenatal surgery.

62 (V) Anesthesia is given to premature children who are 22
63 weeks or more gestational age who undergo surgery;

64 (VI) Anesthesia or analgesics are available in order to
65 minimize or alleviate the pain to the fetus.

66 (VII) The medical risks associated with the particular
67 anesthetic or analgesic.

68 d.e. The medical risks to the woman and fetus of carrying
69 the pregnancy to term.

70 2. Printed materials prepared and provided by the
71 department have been provided to the pregnant woman, if she
72 chooses to view these materials, including:

73 a. A description of the fetus.

74 b. A list of agencies that offer alternatives to
75 terminating the pregnancy.

76 c. Detailed information on the availability of medical
77 assistance benefits for prenatal care, childbirth, and neonatal
78 care.

79 3. The woman acknowledges in writing, before the
80 termination of pregnancy, that the information required to be
81 provided under this subsection has been provided.

82
83 Nothing in this paragraph is intended to prohibit a physician
84 from providing any additional information which the physician

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85 | deems material to the woman's informed decision to terminate her
86 | pregnancy.

87 | (b) In the event a medical emergency exists and a
88 | physician cannot comply with the requirements for informed
89 | consent, a physician may terminate a pregnancy if he or she has
90 | obtained at least one corroborative medical opinion attesting to
91 | the medical necessity for emergency medical procedures and to
92 | the fact that to a reasonable degree of medical certainty the
93 | continuation of the pregnancy would threaten the life of the
94 | pregnant woman. In the event no second physician is available
95 | for a corroborating opinion, the physician may proceed but shall
96 | document reasons for the medical necessity in the patient's
97 | medical records.

98 | (c) Violation of this subsection by a physician
99 | constitutes grounds for disciplinary action under s. 458.331 or
100 | s. 459.015. Substantial compliance or reasonable belief that
101 | complying with the requirements of informed consent would
102 | threaten the life or health of the patient is a defense to any
103 | action brought under this paragraph.

104 | (9) FETAL ANESTHESIA.—Except in the case of a medical
105 | emergency, as defined in s. 390.01114(2)(d), before an abortion
106 | is performed on a fetus whose gestational age is 22 weeks or
107 | more, the physician performing the abortion shall offer to
108 | administer an anesthetic or analgesic to the fetus. The
109 | physician shall document in the patient's medical history file
110 | whether the patient has accepted or declined fetal anesthetic or
111 | analgesic.

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112 (13) CIVIL ACTION; REMEDIES.—Any woman upon whom an
113 abortion was performed in violation of sub-subparagraph
114 (3)(a)1.c. or subsection (9) or the father of a fetus who was
115 the subject of such an abortion shall have a cause of action for
116 negligence. The action may be brought in any court of competent
117 jurisdiction. Any plaintiff who prevails in any such action for
118 any amount is entitled to recover reasonable attorney's fees,
119 costs of the action, and damages, unless the court finds that
120 the plaintiff has acted in bad faith or with malicious purpose
121 or that there was a complete absence of a justiciable issue of
122 either law or fact. A prevailing defendant is entitled to
123 recover reasonable attorney's fees under s. 57.105 only if the
124 court determines that the plaintiff's claim involved a complete
125 absence of justiciable law or fact. The remedies provided in
126 this section are in addition to other legal and administrative
127 remedies available to the woman or the father. Any action
128 brought pursuant to this subsection is not a claim for medical
129 malpractice, and chapter 766 does not apply. The statute of
130 limitations in s. 95.11(3) applies to an action under this
131 subsection.

132 Section 2. Paragraph (e) of subsection (3) of section
133 390.012, Florida Statutes, is amended to read:

134 390.012 Powers of agency; rules; disposal of fetal
135 remains.—

136 (3) For clinics that perform or claim to perform abortions
137 after the first trimester of pregnancy, the agency shall adopt
138 rules pursuant to ss. 120.536(1) and 120.54 to implement the
139 provisions of this chapter, including the following:

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140 (e) Rules relating to the abortion procedure. At a
141 minimum, these rules shall require:

142 1. That a physician, registered nurse, licensed practical
143 nurse, advanced registered nurse practitioner, or physician
144 assistant is available to all patients throughout the abortion
145 procedure.

146 2. Standards for the safe conduct of abortion procedures
147 that conform to obstetric standards in keeping with established
148 standards of care regarding the estimation of fetal age as
149 defined in rule.

150 3. Appropriate use of general and local anesthesia,
151 analgesia, and sedation if ordered by the physician, for the
152 pregnant woman and for the fetus.

153 4. Appropriate precautions, such as the establishment of
154 intravenous access at least for patients undergoing post-first
155 trimester abortions.

156 5. Appropriate monitoring of the vital signs and other
157 defined signs and markers of the patient's status throughout the
158 abortion procedure and during the recovery period until the
159 patient's condition is deemed to be stable in the recovery room.

160 Section 3. This act shall take effect July 1, 2011.