

By the Committee on Health Regulation; and Senator Flores

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1 A bill to be entitled
2 An act relating to abortions; amending s. 390.011,
3 F.S.; defining the term "viability" as it relates to
4 the termination of a pregnancy; amending s. 390.0111,
5 F.S.; restricting the circumstances in which an
6 abortion may be performed in the third trimester or
7 after viability; requiring an abortion clinic to
8 provide conspicuous notice on any form or medium of
9 advertisement that the abortion clinic is prohibited
10 from performing abortions in the third trimester or
11 after viability; providing certain physician,
12 location, and clinic licensure and ownership
13 requirements; requiring a physician who offers to
14 perform or who performs terminations of pregnancy to
15 complete continuing education related to ethics;
16 prohibiting a termination of pregnancy from being
17 performed in a location other than a validly licensed
18 hospital, abortion clinic, or physician's office;
19 prohibiting a person from establishing, conducting,
20 managing, or operating an abortion clinic without a
21 valid, current license; prohibiting a person from
22 performing or assisting in performing an abortion on a
23 person in the third trimester or after viability in a
24 location other than a hospital; requiring an abortion
25 clinic to be owned and operated by a physician who has
26 received training during residency in performing a
27 dilation-and-curettage procedure or a dilation-and-
28 evacuation procedure; providing a penalty; deleting
29 the definition of the term "viability"; providing that

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failure to dispose of fetal remains in accordance with rules of the Department of Health is a misdemeanor of the first degree rather than a misdemeanor of the second degree; clarifying provisions providing that it is a first-degree misdemeanor to unlawfully advertise how to obtain a miscarriage of a woman pregnant with a child; requiring the Department of Health to permanently revoke the license of any health care practitioner who is convicted or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, certain felony criminal acts; requiring the Agency for Health Care Administration to submit to the Governor and Legislature an annual report of aggregate statistical data relating to abortions and provide such data on its website; amending s. 390.0112, F.S.; requiring the director of a medical facility or physician's office to submit a monthly report to the agency on a form developed by the agency which is consistent with the U.S. Standard Report of Induced Termination of Pregnancy from the Centers for Disease Control and Prevention; requiring that the submitted report not contain any personal identifying information; requiring the agency to submit reported data to the Division of Reproductive Health within the Centers for Disease Control and Prevention; amending s. 390.012, F.S.; requiring the agency to adopt rules that prescribe standards for placing conspicuous notice on any form or medium of advertisement of an abortion

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59 clinic which states that the abortion clinic is
60 prohibited from performing abortions in the third
61 trimester or after viability; amending s. 456.013,
62 F.S.; requiring that each applicable board require a
63 physician who offers to perform or performs
64 terminations of pregnancy to annually complete a
65 course relating to ethics as part of the licensure and
66 renewal process; providing that the course counts
67 toward the total number of continuing education hours
68 required for the profession; requiring the applicable
69 board to approve the course; repealing s. 797.02,
70 F.S., relating to the advertising of drugs for
71 abortions; repealing s. 797.03, F.S., relating to
72 prohibited acts related to abortions and their
73 penalties; providing for severability; providing an
74 effective date.

75
76 Be It Enacted by the Legislature of the State of Florida:

77
78 Section 1. Subsection (9) is added to section 390.011,
79 Florida Statutes, to read:

80 390.011 Definitions.—As used in this chapter, the term:
81 (9) "Viability" means that stage of fetal development when
82 the life of the unborn child may, with a reasonable degree of
83 medical probability, be continued indefinitely outside the womb.

84 Section 2. Subsections (1), (2), (4), (7), and (10) of
85 section 390.0111, Florida Statutes, are amended, and subsection
86 (12) is added to that section, to read:

87 390.0111 Termination of pregnancies.—

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88 (1) TERMINATION IN THIRD TRIMESTER OR AFTER VIABILITY; WHEN
89 ALLOWED.—

90 (a) A ~~No~~ termination of pregnancy may not shall be
91 performed after the period at which, in the best medical
92 judgment of the physician, the fetus has attained viability, as
93 defined in s. 390.011, or on any person human-being in the third
94 trimester of pregnancy unless:

95 1. ~~(a)~~ Two physicians certify in writing to the fact that,
96 to a reasonable degree of medical probability, the termination
97 of pregnancy is necessary to prevent the death of the pregnant
98 woman or the substantial and irreversible impairment of a major
99 bodily function of the pregnant woman ~~save the life or preserve~~
100 ~~the health of the pregnant woman~~; or

101 2. ~~(b)~~ The physician certifies in writing to the existence
102 of a medical emergency, as defined in s. 390.01114(2)(d) medical
103 ~~necessity for legitimate emergency medical procedures for~~
104 ~~termination of pregnancy in the third trimester~~, and another
105 physician is not available for consultation.

106 (b) An abortion clinic must provide conspicuous notice on
107 any form or medium of advertisement that the abortion clinic is
108 prohibited from performing abortions in the third trimester or
109 after viability.

110 (2) PHYSICIAN, LOCATION, AND CLINIC LICENSURE AND OWNERSHIP
111 REQUIREMENTS ~~PERFORMANCE BY PHYSICIAN REQUIRED.~~—

112 (a) A ~~No~~ termination of pregnancy may not shall be
113 performed at any time except by a physician as defined in s.
114 390.011. A physician who offers to perform or who performs
115 terminations of pregnancy in an abortion clinic must annually
116 complete a minimum of 3 hours of continuing education related to

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ethics.

(b) Except for procedures that must be conducted in a hospital or in emergency-care situations, a termination of pregnancy may not be performed in a location other than in a validly licensed hospital, abortion clinic, or physician's office.

(c) A person may not establish, conduct, manage, or operate an abortion clinic without a valid current license.

(d) A person may not perform or assist in performing an abortion on a person in the third trimester or after viability, other than in a hospital.

(e) Other than an abortion clinic licensed before October 1, 2011, an abortion clinic must be wholly owned and operated by a physician who has received training during residency in performing a dilation-and-curettage procedure or a dilation-and-evacuation procedure.

(f) A person who willfully violates paragraph (c), paragraph (d), or paragraph (e) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—
If a termination of pregnancy is performed during viability, no person who performs or induces the termination of pregnancy shall fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. ~~"Viability" means that stage of fetal development when the life of the unborn child may with a reasonable degree of~~

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146 ~~medical probability be continued indefinitely outside the womb.~~
147 Notwithstanding the provisions of this subsection, the woman's
148 life and health shall constitute an overriding and superior
149 consideration to the concern for the life and health of the
150 fetus when such concerns are in conflict.

151 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a
152 sanitary and appropriate manner and in accordance with standard
153 health practices, as provided by rule of the Department of
154 Health. Failure to dispose of fetal remains in accordance with
155 department rules is a misdemeanor of the first ~~second~~ degree,
156 punishable as provided in s. 775.082 or s. 775.083.

157 (10) PENALTIES FOR VIOLATION.—

158 (a) Except as provided in subsections (3) and (7):

159 1.-(a) Any person who willfully performs, or actively
160 participates in, a termination of pregnancy procedure in
161 violation of the requirements of this section commits a felony
162 of the third degree, punishable as provided in s. 775.082, s.
163 775.083, or s. 775.084.

164 2.-(b) Any person who performs, or actively participates in,
165 a termination of pregnancy procedure in violation of the
166 provisions of this section which results in the death of the
167 woman commits a felony of the second degree, punishable as
168 provided in s. 775.082, s. 775.083, or s. 775.084.

169 3. Any person who knowingly advertises, prints, publishes,
170 distributes, or circulates, or who knowingly causes to be
171 advertised, printed, published, distributed, or circulated, any
172 pamphlet, printed paper, book, newspaper notice, advertisement,
173 or reference containing words or language giving or conveying
174 any notice, hint, or reference to any person, or the name of any

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175 person, real or fictitious, from whom, or to any place, house,
176 shop, or office where any poison, drug, mixture, preparation,
177 medicine, or noxious thing, or any instrument or means whatever,
178 or any advice, direction, information, or knowledge that may be
179 obtained for the purpose of performing an abortion in violation
180 of this chapter, commits a misdemeanor of the first degree,
181 punishable as provided in s. 775.082 or s. 775.083.

182 (b) The department shall permanently revoke the license of
183 any licensed health care practitioner who has been convicted or
184 found guilty of, or entered a plea of guilty or nolo contendere
185 to, regardless of adjudication, a felony criminal act provided
186 in paragraph (a).

187 (12) RESPONSIBILITIES OF THE AGENCY.—Before each general
188 legislative session, the agency shall report aggregate
189 statistical data relating to abortions, which has been reported
190 to the Division of Reproductive Health within the Centers for
191 Disease Control and Prevention, on its website and provide an
192 annual report to the Governor, the President of the Senate, and
193 the Speaker of the House of Representatives regarding such data.
194 Any information required to be reported under this paragraph
195 must not include any personal identifying information.

196 Section 3. Subsection (1) of section 390.0112, Florida
197 Statutes, is amended to read:

198 390.0112 Termination of pregnancies; reporting.—

199 (1) The director of any medical facility or physician's
200 office in which any pregnancy is terminated shall submit a
201 ~~monthly~~ report each month to the agency on a form developed by
202 the agency which is consistent with the U.S. Standard Report of
203 Induced Termination of Pregnancy from the Centers for Disease

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204 Control and Prevention. The submitted report must not contain
205 any personal identifying information ~~which contains the number~~
206 ~~of procedures performed, the reason for same, and the period of~~
207 ~~gestation at the time such procedures were performed to the~~
208 ~~agency.~~ The agency shall be responsible for keeping such reports
209 in a central place from which statistical data and analysis can
210 be made. The agency shall submit reported data to the Division
211 of Reproductive Health within the Centers for Disease Control
212 and Prevention.

213 Section 4. Paragraph (a) of subsection (3) of section
214 390.012, Florida Statutes, is amended to read:

215 390.012 Powers of agency; rules; disposal of fetal
216 remains.—

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

221 (a) Rules for an abortion clinic's physical facilities. At
222 a minimum, these rules shall prescribe standards for:

223 1. Adequate private space that is specifically designated
224 for interviewing, counseling, and medical evaluations.

225 2. Dressing rooms for staff and patients.

226 3. Appropriate lavatory areas.

227 4. Areas for preprocedure hand washing.

228 5. Private procedure rooms.

229 6. Adequate lighting and ventilation for abortion
230 procedures.

231 7. Surgical or gynecological examination tables and other
232 fixed equipment.

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233 8. Postprocedure recovery rooms that are equipped to meet
234 the patients' needs.

235 9. Emergency exits to accommodate a stretcher or gurney.

236 10. Areas for cleaning and sterilizing instruments.

237 11. Adequate areas for the secure storage of medical
238 records and necessary equipment and supplies.

239 12. The display in the abortion clinic, in a place that is
240 conspicuous to all patients, of the clinic's current license
241 issued by the agency.

242 13. Conspicuous notice to be provided on any form or medium
243 of advertisement of the abortion clinic, which must state that
244 the abortion clinic is prohibited from performing abortions in
245 the third trimester or after viability.

246 Section 5. Subsection (7) of section 456.013, Florida
247 Statutes, is amended to read:

248 456.013 Department; general licensing provisions.—

249 (7)(a) The boards, or the department when there is no
250 board, shall require the completion of a 2-hour course relating
251 to prevention of medical errors as part of the licensure and
252 renewal process. The 2-hour course shall count towards the total
253 number of continuing education hours required for the
254 profession. The course shall be approved by the board or
255 department, as appropriate, and shall include a study of root-
256 cause analysis, error reduction and prevention, and patient
257 safety. In addition, the course approved by the Board of
258 Medicine and the Board of Osteopathic Medicine shall include
259 information relating to the five most misdiagnosed conditions
260 during the previous biennium, as determined by the board. If the
261 course is being offered by a facility licensed pursuant to

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chapter 395 for its employees, the board may approve up to 1 hour of the 2-hour course to be specifically related to error reduction and prevention methods used in that facility.

(b) In accordance with the requirement under s. 390.0111, the boards, or the department if there is no board, shall require a physician who offers to perform or performs terminations of pregnancy in an abortion clinic to annually complete a 3-hour course related to ethics as part of the licensure and renewal process. The 3-hour course shall count toward the total number of continuing education hours required for the profession. The applicable board, or the department if there is no board, shall approve the course, as appropriate.

Section 6. Section 797.02, Florida Statutes, is repealed.

Section 7. Section 797.03, Florida Statutes, is repealed.

Section 8. If any provision of this act is held invalid with respect to any person or circumstance, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. This act shall take effect October 1, 2011.