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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2014	.	
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The Committee on Health Policy (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(9) "Reasonable medical judgment" means a medical judgment



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11 that would be made by a reasonably prudent physician,  
12 knowledgeable about the case and treatment possibilities with  
13 respect to the medical conditions involved.

14 (10) "Standard medical measure" means the medical care that  
15 a physician would provide based on the particular facts of the  
16 pregnancy, the information available to the physician, and the  
17 technology reasonably available in a hospital, as defined in s.  
18 395.002, with an obstetrical department, to preserve the life  
19 and health of the fetus, with or without temporary artificial  
20 life sustaining support, if the fetus were born at the same  
21 stage of fetal development.

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

25 Section 2. Subsections (1), (4), (10), and (13) of section  
26 390.0111, Florida Statutes, are amended to read:

27 390.0111 Termination of pregnancies.—

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

32 (a) Two physicians certify in writing ~~to the fact~~ that, in  
33 reasonable medical judgment ~~to a reasonable degree of medical~~  
34 ~~probability~~, the termination of the pregnancy is necessary to  
35 save the pregnant woman's life or avert a serious risk of  
36 substantial and irreversible physical impairment of a major  
37 bodily function of the pregnant woman other than a psychological  
38 condition. ~~or preserve the health of the pregnant woman; or~~

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



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40 medical judgment, there is a to the medical necessity for  
41 legitimate emergency medical procedures for termination of the  
42 pregnancy to save the pregnant woman's life or avert a serious  
43 risk of imminent substantial and irreversible physical  
44 impairment of a major bodily function of the pregnant woman  
45 other than a psychological condition in the third trimester, and  
46 another physician is not available for consultation.

47 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER  
48 DURING VIABILITY.—If a termination of pregnancy is performed in  
49 the third trimester, the physician performing during viability,  
50 no person who performs or induces the termination of pregnancy  
51 must exercise the same shall fail to use that degree of  
52 professional skill, care, and diligence to preserve the life and  
53 health of the fetus which the physician such person would be  
54 required to exercise in order to preserve the life and health of  
55 a any fetus intended to be born and not aborted. However, if  
56 preserving the life and health of the fetus conflicts with  
57 preserving the life and health of the pregnant woman, the  
58 physician must consider preserving the woman's life and health  
59 the overriding and superior concern "Viability" means that stage  
60 of fetal development when the life of the unborn child may with  
61 a reasonable degree of medical probability be continued  
62 indefinitely outside the womb. Notwithstanding the provisions of  
63 this subsection, the woman's life and health shall constitute an  
64 overriding and superior consideration to the concern for the  
65 life and health of the fetus when such concerns are in conflict.

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

68 (a) Any person who willfully performs, or actively



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69 participates in, a termination of pregnancy ~~procedure~~ in  
70 violation of the requirements of this section or s. 390.01112  
71 commits a felony of the third degree, punishable as provided in  
72 s. 775.082, s. 775.083, or s. 775.084.

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

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

82 Section 3. Section 390.01112, Florida Statutes, is created  
83 to read:

84 390.01112 Termination of pregnancies during viability.—

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

88 (a) Two physicians certify in writing that, in reasonable  
89 medical judgment, the termination of the pregnancy is necessary  
90 to save the pregnant woman's life or avert a serious risk of  
91 substantial and irreversible physical impairment of a major  
92 bodily function of the pregnant woman other than a psychological  
93 condition; or

94 (b) The physician certifies in writing that, in reasonable  
95 medical judgment, there is a medical necessity for legitimate  
96 emergency medical procedures for termination of the pregnancy to  
97 save the pregnant woman's life or avert a serious risk of



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98 imminent substantial and irreversible physical impairment of a  
99 major bodily function of the pregnant woman other than a  
100 psychological condition, and another physician is not available  
101 for consultation.

102 (2) Before performing a termination of pregnancy, a  
103 physician must determine if the fetus is viable by, at a  
104 minimum, performing a medical examination of the pregnant woman  
105 and, to the maximum extent possible through reasonably available  
106 tests and the ultrasound required under s. 390.0111(3), an  
107 examination of the fetus. The physician must document in the  
108 pregnant woman's medical file the physician's determination and  
109 the method, equipment, fetal measurements, and any other  
110 information used to determine the viability of the fetus.

111 (3) If a termination of pregnancy is performed during  
112 viability, the physician performing the termination of pregnancy  
113 must exercise the same degree of professional skill, care, and  
114 diligence to preserve the life and health of the fetus that the  
115 physician would be required to exercise in order to preserve the  
116 life and health of a fetus intended to be born and not aborted.  
117 However, if preserving the life and health of the fetus  
118 conflicts with preserving the life and health of the woman, the  
119 physician must consider preserving the woman's life and health  
120 the overriding and superior concern.

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

123 797.03 Prohibited acts; penalties.—

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



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127 Section 5. Severability and reversion.—

128 (1) If any provision of this act or its application to any  
129 person or circumstance is held invalid, the invalidity does not  
130 affect other provisions or applications of this act which can be  
131 given effect without the invalid provision or application, and  
132 to this end the provisions of this act are severable.

133 (2) Notwithstanding subsection (1), if s. 390.01112,  
134 Florida Statutes, is held unconstitutional and severed by a  
135 court having jurisdiction, the amendments made by this act to s.  
136 390.011, Florida Statutes, and subsections (4), (10), and (13)  
137 of s. 390.0111, Florida Statutes, will be repealed and will  
138 revert to the law as it existed on January 1, 2014.

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

140  
141 ===== T I T L E A M E N D M E N T =====

142 And the title is amended as follows:

143 Delete everything before the enacting clause  
144 and insert:

145 A bill to be entitled  
146 An act relating to the termination of pregnancies;  
147 amending s. 390.011, F.S.; defining the terms  
148 "reasonable medical judgment" and "standard medical  
149 measure" and redefining the term "viability"; amending  
150 s. 390.0111, F.S.; revising the circumstances under  
151 which a pregnancy in the third trimester may be  
152 terminated; providing the standard of medical care for  
153 the termination of a pregnancy during the third  
154 trimester; providing criminal penalties for a  
155 violation of s. 390.01112, F.S.; authorizing



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156 administrative discipline for a violation of s.  
157 390.01112, F.S., by certain licensed professionals;  
158 creating s. 390.01112, F.S.; prohibiting the  
159 termination of a viable fetus; providing exceptions;  
160 requiring a physician to perform certain examinations  
161 to determine the viability of a fetus; providing the  
162 standard of care for the termination of a viable  
163 fetus; amending s. 797.03, F.S.; prohibiting an  
164 abortion of a viable fetus outside of a hospital;  
165 providing for severability; providing for a contingent  
166 future repeal and reversion of law; providing an  
167 effective date.