

1 A bill to be entitled
2 An act relating to abortion; providing a short title;
3 providing legislative findings; amending s. 390.011,
4 F.S.; providing definitions; amending s. 390.0111,
5 F.S.; requiring a physician performing or inducing an
6 abortion to first make a determination of the probable
7 postfertilization age of the unborn child; providing
8 an exception; providing for disciplinary action
9 against noncompliant physicians; prohibiting an
10 abortion if the probable postfertilization age of the
11 woman's unborn child is 20 or more weeks; providing an
12 exception; providing recordkeeping and reporting
13 requirements for physicians; providing for rulemaking;
14 requiring an annual report by the Department of
15 Health; providing financial penalties for late
16 reports; providing for civil actions to require
17 reporting; providing for disciplinary action against
18 noncompliant physicians; providing criminal penalties
19 for intentional or reckless falsification of a report;
20 providing criminal penalties for any person who
21 intentionally or recklessly performs or attempts to
22 perform an abortion in violation of specified
23 provisions; providing that a penalty may not be
24 assessed against a woman involved in such an abortion
25 or attempt; providing for civil actions by certain
26 persons for intentional or reckless violations;
27 providing for actions for injunctive relief by certain
28 persons for intentional violations; providing for

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29 award of attorney fees in certain circumstances;
30 requiring that in every civil or criminal proceeding
31 or action brought under the court rule on whether the
32 anonymity of any woman upon whom an abortion was
33 performed or attempted shall be preserved from public
34 disclosure if she does not give her consent to such
35 disclosure; requiring specified findings if a court
36 determines that the anonymity of the woman should be
37 preserved from public disclosure; conforming cross-
38 references; amending s. 765.113, F.S.; conforming a
39 cross-reference; requiring rulemaking by the
40 Department of Health by a specified date; providing an
41 effective date.

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

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45 Section 1. This act may be cited as the "Pain-Capable
46 Unborn Child Protection Act."

47 Section 2. The Legislature finds that:

48 (1) By 20 weeks after fertilization there is substantial
49 evidence that an unborn child has the physical structures
50 necessary to experience pain.

51 (2) There is substantial evidence that, by 20 weeks after
52 fertilization, unborn children seek to evade certain stimuli in
53 a manner that in an infant or an adult would be interpreted as a
54 response to pain.

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55 (3) Anesthesia is routinely administered to unborn
56 children who have developed 20 weeks or more past fertilization
57 who undergo prenatal surgery.

58 (4) Even before 20 weeks after fertilization, unborn
59 children have been observed to exhibit hormonal stress responses
60 to painful stimuli. Such responses were reduced when pain
61 medication was administered directly to such unborn children.

62 (5) This state has a compelling state interest in
63 protecting the lives of unborn children from the stage at which
64 substantial medical evidence indicates that they are capable of
65 feeling pain.

66 Section 3. Section 390.011, Florida Statutes, is amended
67 to read:

68 390.011 Definitions.—As used in this chapter, the term:

69 (1) "Abortion" means the termination of human pregnancy
70 with an intention other than to produce a live birth or to
71 remove a dead fetus.

72 (2) "Abortion clinic" or "clinic" means any facility in
73 which abortions are performed. The term does not include:

74 (a) A hospital; or

75 (b) A physician's office, provided that the office is not
76 used primarily for the performance of abortions.

77 (3) "Agency" means the Agency for Health Care
78 Administration.

79 (4) "Attempt to perform or induce an abortion" means an
80 act, or an omission of a statutorily required act, that, under
81 the circumstances as the person believes them to be, constitutes
82 a substantial step in a course of conduct planned to culminate

83 in the performance or induction of an abortion.

84 ~~(5)(4)~~ "Department" means the Department of Health.

85 (6) "Fertilization" means the fusion of a human
 86 spermatozoon with a human ovum.

87 ~~(7)(5)~~ "Hospital" means a facility as defined in s.
 88 395.002(12) and licensed under chapter 395 and part II of
 89 chapter 408.

90 (8) "Medical emergency" means a condition that, in
 91 reasonable medical judgment, so complicates the medical
 92 condition of the pregnant woman as to necessitate the immediate
 93 termination of her pregnancy to avert her death or for which a
 94 delay will create a serious risk of substantial and irreversible
 95 physical impairment of a major bodily function. A condition is
 96 not a medical emergency if it is based on a claim or diagnosis
 97 that the woman will engage in conduct that would result in her
 98 death or in substantial and irreversible physical impairment of
 99 a major bodily function.

100 ~~(9)(6)~~ "Partial-birth abortion" means a termination of
 101 pregnancy in which the physician performing the termination of
 102 pregnancy partially vaginally delivers a living fetus before
 103 killing the fetus and completing the delivery.

104 ~~(10)(7)~~ "Physician" means a physician licensed under
 105 chapter 458 or chapter 459 or a physician practicing medicine or
 106 osteopathic medicine in the employment of the United States.

107 (11) "Postfertilization age" means the age of an unborn
 108 child as calculated from the fertilization of the human ovum.

109 (12) "Probable postfertilization age of the unborn child"
 110 means what, in reasonable medical judgment, will with reasonable

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111 probability be the postfertilization age of the unborn child at
112 the time an abortion is planned to be performed.

113 (13) "Reasonable medical judgment" means a medical
114 judgment that would be made by a reasonably prudent physician,
115 knowledgeable about the case and the treatment possibilities
116 with respect to the medical conditions involved.

117 (14)-~~(8)~~ "Third trimester" means the weeks of pregnancy
118 after the 24th week of pregnancy.

119 (15) "Unborn child" or "fetus" means an individual
120 organism of the species homo sapiens from fertilization until
121 live birth.

122 Section 4. A new subsection (1) is added to section
123 390.0111, Florida Statutes, subsections (1) through (13) of that
124 section are renumbered as subsections (2) through (14),
125 respectively, and present subsection (10) and paragraph (b) of
126 present subsection (11) of that section are amended, to read:

127 390.0111 Termination of pregnancies.—

128 (1) PAIN-CAPABLE UNBORN CHILD PROTECTION.—

129 (a)1. Except in the case of a medical emergency that
130 prevents compliance with this subsection, an abortion may not be
131 performed or induced or be attempted to be performed or induced
132 unless the physician performing or inducing it has first made a
133 determination of the probable postfertilization age of the
134 unborn child or relied upon such a determination made by another
135 physician. In making such a determination, a physician shall
136 make such inquiries of the pregnant woman and perform or cause
137 to be performed such medical examinations and tests as a
138 reasonably prudent physician, knowledgeable about the case and

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139 the medical conditions involved, would consider necessary to
140 perform in making an accurate diagnosis with respect to
141 postfertilization age.

142 2. Failure by any physician to conform to any requirement
143 of this paragraph constitutes grounds for disciplinary action
144 under s. 458.331 or s. 459.015.

145 (b) A person may not perform or induce or attempt to
146 perform or induce an abortion upon a woman when it has been
147 determined, by the physician performing or inducing the abortion
148 or by another physician upon whose determination that physician
149 relies, that the probable postfertilization age of the woman's
150 unborn child is 20 or more weeks unless, in reasonable medical
151 judgment she has a condition that so complicates her medical
152 condition as to necessitate the abortion of her pregnancy to
153 avert her death or to avert serious risk of substantial and
154 irreversible physical impairment of a major bodily function.
155 Such a condition may not be deemed to exist if it is based on a
156 claim or diagnosis that the woman will engage in conduct that
157 would result in her death or in substantial and irreversible
158 physical impairment of a major bodily function. With respect to
159 this exception, the physician shall terminate the pregnancy in
160 the manner that, in reasonable medical judgment, provides the
161 best opportunity for the unborn child to survive, unless, in
162 reasonable medical judgment, termination of the pregnancy in
163 that manner would pose a greater risk either of the death of the
164 pregnant woman or of the substantial and irreversible physical
165 impairment of a major bodily function of the woman than would
166 another available method. Such greater risk may not be deemed to

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167 exist if it is based on a claim or diagnosis that the woman will
168 engage in conduct that would result in her death or in
169 substantial and irreversible physical impairment of a major
170 bodily function.

171 (c) Any physician who performs or induces or attempts to
172 perform or induce an abortion shall report to the department, on
173 a schedule and in accordance with forms and rules and
174 regulations adopted by the department, the following:

175 1. If a determination of probable postfertilization age
176 was made, the probable postfertilization age determined and the
177 method and basis of the determination.

178 2. If a determination of probable postfertilization age
179 was not made, the basis of the determination that a medical
180 emergency existed.

181 3. If the probable postfertilization age was determined to
182 be 20 or more weeks, the basis of the determination that the
183 pregnant woman had a condition that so complicated her medical
184 condition as to necessitate the abortion of her pregnancy to
185 avert her death or to avert serious risk of substantial and
186 irreversible physical impairment of a major bodily function, or
187 the basis of the determination that it was necessary to preserve
188 the life of an unborn child.

189 4. The method used for the abortion and, in the case of an
190 abortion performed when the probable postfertilization age was
191 determined to be 20 or more weeks, whether the method of
192 abortion used was one that, in reasonable medical judgment,
193 provided the best opportunity for the unborn child to survive
194 or, if such a method was not used, the basis of the

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195 determination that termination of the pregnancy in that manner
196 would pose a greater risk either of the death of the pregnant
197 woman or of the substantial and irreversible physical impairment
198 of a major bodily function of the woman than would other
199 available methods.

200 (d) By June 30 of each year, the department shall issue a
201 public report providing statistics for the previous calendar
202 year compiled from all of the reports covering that year
203 submitted in accordance with paragraph (c). Each such report
204 shall also provide the statistics for all previous calendar
205 years during which this subsection was in effect, adjusted to
206 reflect any additional information from late or corrected
207 reports. The department shall take care to ensure that none of
208 the information included in the public reports could reasonably
209 lead to the identification of any pregnant woman upon whom an
210 abortion was performed.

211 (e) Any physician who fails to submit a report under
212 paragraph (c) by the end of 30 days after the due date shall be
213 subject to a late fee of \$500 for each additional 30-day period
214 or portion of a 30-day period the report is overdue. Any
215 physician required to report in accordance with this subsection
216 who has not submitted a report, or has submitted only an
217 incomplete report, more than 1 year after the due date, may be
218 directed by a court of competent jurisdiction to submit a
219 complete report within a time period stated by court order or be
220 subject to civil contempt. Failure by any physician to conform
221 to any requirement of this subsection constitutes grounds for
222 disciplinary action under s. 458.331 or s. 459.015. Intentional

223 or reckless falsification of any report required under paragraph
 224 (c) is a misdemeanor of the second degree, punishable as
 225 provided in s. 775.082 or s. 775.083.

226 (f) Any person who intentionally or recklessly performs or
 227 attempts to perform an abortion in violation of paragraph (b)
 228 commits a felony of the third degree, punishable as provided in
 229 s. 775.082, s. 775.083, or s. 775.084. A penalty may not be
 230 assessed against the woman upon whom the abortion was performed
 231 or attempted to be performed.

232 (g)1. Any woman upon whom an abortion was performed in
 233 violation of this subsection or the father of the unborn child
 234 who was the subject of such an abortion may maintain an action
 235 against the person who performed the abortion in an intentional
 236 or a reckless violation of this subsection for actual damages.
 237 Any woman upon whom an abortion was attempted in violation of
 238 this subsection may maintain an action against the person who
 239 attempted to perform the abortion in an intentional or a
 240 reckless violation of this subsection for actual damages.

241 2. The woman upon whom an abortion was performed or
 242 attempted in violation of this subsection has a cause of action
 243 for injunctive relief against any person who has intentionally
 244 violated this subsection. Such a cause of action may also be
 245 maintained by a spouse, parent, sibling, guardian, or current or
 246 former licensed health care provider of such a woman or by the
 247 Attorney General or a state attorney with appropriate
 248 jurisdiction. An injunction granted under this subparagraph
 249 shall prevent the violator from performing or attempting more
 250 abortions in violation of this subsection in this state.

251 3. If judgment is rendered in favor of the plaintiff in an
252 action described in this section, the court shall also render
253 judgment for reasonable attorney fees in favor of the plaintiff
254 against the defendant.

255 4. If judgment is rendered in favor of the defendant and
256 the court finds that the plaintiff's suit was frivolous and
257 brought in bad faith, the court shall also render judgment for
258 reasonable attorney fees in favor of the defendant against the
259 plaintiff.

260 5. Neither damages nor attorney fees may be assessed
261 against the woman upon whom an abortion was performed or
262 attempted except as provided in subparagraph 4.

263 (h) In every civil or criminal proceeding or action
264 brought under this subsection, the court shall rule whether the
265 anonymity of any woman upon whom an abortion was performed or
266 attempted shall be preserved from public disclosure if she does
267 not give her consent to such disclosure. The court, upon motion
268 or sua sponte, shall make such a ruling and, upon determining
269 that her anonymity should be preserved, shall issue orders to
270 the parties, witnesses, and counsel and direct the sealing of
271 the record and exclusion of individuals from courtrooms or
272 hearing rooms to the extent necessary to safeguard her identity
273 from public disclosure. Each such order shall be accompanied by
274 specific written findings explaining why the anonymity of the
275 woman should be preserved from public disclosure, why the order
276 is essential to that end, how the order is narrowly tailored to
277 serve that interest, and why no reasonable less restrictive
278 alternative exists. In the absence of written consent of the

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279 woman upon whom an abortion was performed or attempted, anyone,
 280 other than a public official, who brings an action under
 281 paragraph (g) shall do so under a pseudonym. This paragraph does
 282 not require the concealment of the identity of the plaintiff or
 283 of witnesses from the defendant or from attorneys for the
 284 defendant.

285 (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in
 286 subsections (1), (4), ~~(3)~~ and (8) ~~(7)~~:

287 (a) Any person who willfully performs, or actively
 288 participates in, a termination of pregnancy procedure in
 289 violation of the requirements of this section commits a felony
 290 of the third degree, punishable as provided in s. 775.082, s.
 291 775.083, or s. 775.084.

292 (b) Any person who performs, or actively participates in,
 293 a termination of pregnancy procedure in violation of the
 294 provisions of this section which results in the death of the
 295 woman commits a felony of the second degree, punishable as
 296 provided in s. 775.082, s. 775.083, or s. 775.084.

297 (12)~~(11)~~ CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
 298 RELIEF.—

299 (b) In a civil action under this section, appropriate
 300 relief includes:

- 301 1. Monetary damages for all injuries, psychological and
- 302 physical, occasioned by the violation of subsection (6) ~~(5)~~.
- 303 2. Damages equal to three times the cost of the partial-
- 304 birth abortion.

305 Section 5. Subsection (2) of section 765.113, Florida
 306 Statutes, is amended to read:

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307 765.113 Restrictions on providing consent.—Unless the
308 principal expressly delegates such authority to the surrogate in
309 writing, or a surrogate or proxy has sought and received court
310 approval pursuant to rule 5.900 of the Florida Probate Rules, a
311 surrogate or proxy may not provide consent for:

312 (2) Withholding or withdrawing life-prolonging procedures
313 from a pregnant patient prior to viability as defined in s.
314 390.0111(5) ~~(4)~~.

315 Section 6. Notwithstanding any other provision of law,
316 within 90 days after the effective date of this act the
317 Department of Health shall adopt rules to assist in compliance
318 with s. 390.0111(1)(c), (d), and (e), Florida Statutes, as
319 created by this act.

320 Section 7. This act shall take effect July 1, 2012.