

By Senator Flores

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1 A bill to be entitled
2 An act relating to the termination of pregnancies;
3 amending s. 390.011, F.S.; defining the term "standard
4 medical measure" and redefining the term "viability";
5 amending s. 390.0111, F.S.; revising the circumstances
6 under which a pregnancy in the third trimester may be
7 terminated; providing the standard of medical care for
8 the termination of a pregnancy during the third
9 trimester; providing criminal penalties for a
10 violation of s. 390.01112, F.S.; authorizing
11 administrative discipline for a violation of s.
12 390.01112, F.S., by certain licensed professionals;
13 creating s. 390.01112, F.S.; prohibiting the
14 termination of a viable fetus; providing exceptions;
15 requiring a physician to perform certain examinations
16 to determine the viability of a fetus; providing the
17 standard of care for the termination of a viable
18 fetus; amending s. 797.03, F.S.; prohibiting an
19 abortion of a viable fetus outside of a hospital;
20 providing for severability; providing for a contingent
21 future repeal and reversion of law; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Present subsection (9) of section 390.011,
27 Florida Statutes, is redesignated as subsection (10), and new
28 subsections (9) and (11) are added to that section, to read:
29 390.011 Definitions.—As used in this chapter, the term:

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30 (9) "Standard medical measure" means the medical care that
31 a physician would provide based on the particular facts of the
32 pregnancy, the information available to the physician, and the
33 technology reasonably available in a hospital, as defined in s.
34 395.002, with an obstetrical department, to preserve the life
35 and health of the fetus, with or without temporary artificial
36 life sustaining support, if the fetus were born at the same
37 stage of fetal development.

38 (11) "Viable" or "viability" means the stage of fetal
39 development when the life of a fetus is sustainable outside the
40 womb through standard medical measures.

41 Section 2. Subsections (1), (4), (10), and (13) of section
42 390.0111, Florida Statutes, are amended to read:

43 390.0111 Termination of pregnancies.—

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

48 (a) Two physicians certify in writing ~~to the fact~~ that, to
49 a reasonable degree of medical probability, the termination of
50 the pregnancy is necessary to save the pregnant woman's life or
51 avert a serious risk of substantial and irreversible physical
52 impairment of a major bodily function of the pregnant woman
53 other than a psychological condition. ~~or preserve the health of~~
54 ~~the pregnant woman; or~~

55 (b) The physician certifies in writing to the medical
56 necessity for legitimate emergency medical procedures for
57 termination of the pregnancy to save the pregnant woman's life
58 or avert a serious risk of imminent substantial and irreversible

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59 physical impairment of a major bodily function of the pregnant
60 woman other than a psychological condition in the third
61 ~~trimester~~, and another physician is not available for
62 consultation.

63 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER
64 ~~DURING VIABILITY~~.—If a termination of pregnancy is performed in
65 the third trimester, the physician performing during viability,
66 ~~no person who performs or induces~~ the termination of pregnancy
67 must exercise the same shall fail to use that degree of
68 professional skill, care, and diligence to preserve the life and
69 health of the fetus which the physician ~~such person~~ would be
70 required to exercise in order to preserve the life and health of
71 a any fetus intended to be born and not aborted. However, if
72 preserving the life and health of the fetus conflicts with
73 preserving the life and health of the pregnant woman, the
74 physician must consider preserving the woman's life and health
75 the overriding and superior concern "Viability" means that stage
76 ~~of fetal development when the life of the unborn child may with~~
77 ~~a reasonable degree of medical probability be continued~~
78 ~~indefinitely outside the womb. Notwithstanding the provisions of~~
79 ~~this subsection, the woman's life and health shall constitute an~~
80 ~~overriding and superior consideration to the concern for the~~
81 ~~life and health of the fetus when such concerns are in conflict.~~

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

84 (a) Any person who willfully performs, or actively
85 participates in, a termination of pregnancy ~~procedure~~ in
86 violation of the requirements of this section or s. 390.01112
87 commits a felony of the third degree, punishable as provided in

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88 s. 775.082, s. 775.083, or s. 775.084.

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

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

98 Section 3. Section 390.01112, Florida Statutes, is created
99 to read:

100 390.01112 Termination of pregnancies during viability.—

101 (1) No termination of pregnancy shall be performed on any
102 human being if the physician reasonably determines that, in the
103 physician's good faith medical judgment, the fetus has achieved
104 viability, unless:

105 (a) Two physicians certify in writing that, to a reasonable
106 degree of medical probability, the termination of the pregnancy
107 is necessary to save the pregnant woman's life or avert a
108 serious risk of substantial and irreversible physical impairment
109 of a major bodily function of the pregnant woman other than a
110 psychological condition; or

111 (b) The physician certifies in writing to the medical
112 necessity for legitimate emergency medical procedures for
113 termination of the pregnancy to save the pregnant woman's life
114 or avert a serious risk of imminent substantial and irreversible
115 physical impairment of a major bodily function of the pregnant
116 woman other than a psychological condition, and another

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117 physician is not available for consultation.

118 (2) Before performing a termination of pregnancy, a
119 physician must determine if the fetus is viable by, at a
120 minimum, performing a medical examination of the pregnant woman
121 and, to the maximum extent possible through reasonably available
122 tests and the ultrasound required under s. 390.0111(3), an
123 examination of the fetus. The physician must document in the
124 pregnant woman's medical file the physician's determination and
125 the method, equipment, fetal measurements, and any other
126 information used to determine the viability of the fetus.

127 (3) If a termination of pregnancy is performed during
128 viability, the physician performing the termination of pregnancy
129 must exercise the same degree of professional skill, care, and
130 diligence to preserve the life and health of the fetus that the
131 physician would be required to exercise in order to preserve the
132 life and health of a fetus intended to be born and not aborted.
133 However, if preserving the life and health of the fetus
134 conflicts with preserving the life and health of the woman, the
135 physician must consider preserving the woman's life and health
136 the overriding and superior concern.

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

139 797.03 Prohibited acts; penalties.—

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

143 Section 5. Severability and reversion.—

144 (1) If any provision of this act or its application to any
145 person or circumstance is held invalid, the invalidity does not

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146 affect other provisions or applications of this act which can be
147 given effect without the invalid provision or application, and
148 to this end the provisions of this act are severable.

149 (2) Notwithstanding subsection (1), if s. 390.01112,
150 Florida Statutes, is held unconstitutional and severed by a
151 court having jurisdiction, the amendments made by this act to s.
152 390.011, Florida Statutes, and subsections (4), (10), and (13)
153 of s. 390.0111, Florida Statutes, will be repealed and will
154 revert to the law as it existed on January 1, 2014.

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