

By Senator Baxley

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1 A bill to be entitled
2 An act relating to abortion; amending s. 390.011,
3 F.S.; providing and revising definitions; amending s.
4 390.0111, F.S.; requiring a physician to perform an
5 examination for, and inform a woman obtaining an
6 abortion of the presence of, a detectable fetal
7 heartbeat; requiring the physician to review the
8 results of such examination with the patient before
9 the woman gives informed consent for the abortion
10 procedure; requiring that a woman who declines to
11 review the results certify in writing that she did so
12 of her own free will and without undue influence;
13 providing criminal penalties; amending s. 390.01112,
14 F.S.; prohibiting the termination of a pregnancy when
15 a fetal heartbeat is detected; providing exceptions;
16 requiring a physician to perform certain examinations
17 to detect a fetal heartbeat; requiring the physician
18 to document such findings in the woman's medical file;
19 providing the standard of care for the termination of
20 a pregnancy when a fetal heartbeat exists; amending s.
21 390.012, F.S.; conforming terminology; providing an
22 effective date.

23
24 WHEREAS, as many as 30 percent of natural pregnancies end
25 in spontaneous miscarriage, and

26 WHEREAS, fewer than 5 percent of all natural pregnancies
27 end in spontaneous miscarriage after the detection of fetal
28 cardiac activity, and

29 WHEREAS, more than 90 percent of in vitro pregnancies do

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30 not survive the first trimester when cardiac activity is not
31 detected in the gestational sac, and

32 WHEREAS, a fetal heartbeat, therefore, is a key medical
33 predictor that an unborn human being will reach live birth, and

34 WHEREAS, cardiac activity begins at a biologically
35 identifiable moment in time, normally when the fetal heart is
36 formed in the gestational sac, and

37 WHEREAS, the State of Florida has a legitimate interest
38 from the outset of a pregnancy in protecting the health of the
39 woman and the life of the unborn human being who may be born,
40 and

41 WHEREAS, in order to make an informed choice about whether
42 to continue her pregnancy, the pregnant woman has a legitimate
43 interest in knowing the likelihood of the unborn human being
44 surviving to full-term birth based upon the presence of cardiac
45 activity, NOW, THEREFORE,

46

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

48

49 Section 1. Present subsections (6), (7), (8), (9), (10),
50 (11), (12), and (13) of section 390.011, Florida Statutes, are
51 renumbered as subsections (7), (9), (10), (11), (12), (13),
52 (14), and (16), respectively, present subsections (1), (6), (8),
53 (11), and (13) are amended, and new subsections (6), (8), and
54 (15) are added to that section, to read:

55 390.011 Definitions.—As used in this chapter, the term:

56 (1) "Abortion" means the termination of human pregnancy
57 with an intention other than to produce a live birth or to
58 remove a dead unborn human being ~~fetus~~.

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59 (6) "Fetal heartbeat" means cardiac activity or the steady
60 and repetitive rhythmic contraction of the fetal heart within
61 the gestational sac.

62 (7)~~(6)~~ "Gestation" means the development of a human embryo
63 or an unborn human being ~~fetus~~ between fertilization and birth.

64 (8) "Gestational sac" means the structure that comprises
65 the extraembryonic membranes that envelop the unborn human being
66 and that is typically visible by ultrasound after the fourth
67 week of pregnancy.

68 (10)~~(8)~~ "Partial-birth abortion" means a termination of
69 pregnancy in which the physician performing the termination of
70 pregnancy partially vaginally delivers a living unborn human
71 being ~~fetus~~ before killing the unborn human being ~~fetus~~ and
72 completing the delivery.

73 (13)~~(11)~~ "Standard medical measure" means the medical care
74 that a physician would provide based on the particular facts of
75 the pregnancy, the information available to the physician, and
76 the technology reasonably available in a hospital, as defined in
77 s. 395.002, with an obstetrical department, to preserve the life
78 and health of the unborn human being ~~fetus~~, with or without
79 temporary artificial life-sustaining support, if the unborn
80 human being ~~fetus~~ were born at the same stage of gestational
81 ~~fetal~~ development.

82 (15) "Unborn human being" means an individual organism of
83 the species *Homo sapiens* from fertilization until live birth.

84 (16)~~(13)~~ "Viable" or "viability" means the stage of ~~fetal~~
85 development when the life of an unborn human being ~~a fetus~~ is
86 sustainable outside the womb through standard medical measures.

87 Section 2. Paragraph (a) of subsection (3), subsections

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88 (4), (6), and (10), paragraph (a) of subsection (11), and
89 paragraph (a) of subsection (15) of section 390.0111, Florida
90 Statutes, are amended to read:

91 390.0111 Termination of pregnancies.—

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

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

99 1. The physician who is to perform the procedure, or the
100 referring physician, has, at a minimum, orally, while physically
101 present in the same room, and at least 24 hours before the
102 procedure, informed the woman of:

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

107 b. The probable gestational age of the unborn human being
108 ~~fetus~~, verified by an ultrasound, at the time the termination of
109 pregnancy is to be performed.

110 (I) The ultrasound must be performed by the physician who
111 is to perform the abortion or by a person having documented
112 evidence that he or she has completed a course in the operation
113 of ultrasound equipment as prescribed by rule and who is working
114 in conjunction with the physician.

115 (II) The person performing the ultrasound must offer the
116 woman the opportunity to view the live ultrasound images and

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117 hear an explanation of them. If the woman accepts the
118 opportunity to view the images and hear the explanation, a
119 physician or a registered nurse, licensed practical nurse,
120 advanced practice registered nurse, or physician assistant
121 working in conjunction with the physician must contemporaneously
122 review and explain the images to the woman before the woman
123 gives informed consent to having an abortion procedure
124 performed.

125 (III) The woman has a right to decline to view and hear the
126 explanation of the live ultrasound images after she is informed
127 of her right and offered an opportunity to view the images and
128 hear the explanation. If the woman declines, the woman shall
129 complete a form acknowledging that she was offered an
130 opportunity to view and hear the explanation of the images but
131 that she declined that opportunity. The form must also indicate
132 that the woman's decision was not based on any undue influence
133 from any person to discourage her from viewing the images or
134 hearing the explanation and that she declined of her own free
135 will.

136 (IV) Unless requested by the woman, the person performing
137 the ultrasound may not offer the opportunity to view the images
138 and hear the explanation and the explanation may not be given
139 if, at the time the woman schedules or arrives for her
140 appointment to obtain an abortion, a copy of a restraining
141 order, police report, medical record, or other court order or
142 documentation is presented which provides evidence that the
143 woman is obtaining the abortion because the woman is a victim of
144 rape, incest, domestic violence, or human trafficking or that
145 the woman has been diagnosed as having a condition that, on the

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146 basis of a physician's good faith clinical judgment, would
147 create a serious risk of substantial and irreversible impairment
148 of a major bodily function if the woman delayed terminating her
149 pregnancy.

150 c. Whether the unborn human being has a detectable fetal
151 heartbeat. The physician who performs the examination for the
152 presence of a fetal heartbeat must offer the woman the
153 opportunity to view or hear the fetal heartbeat and present the
154 statistical data regarding the probability of survival. If the
155 woman declines, the woman shall complete a form acknowledging
156 that she was offered an opportunity to view and hear the fetal
157 heartbeat but that she declined that opportunity. The form must
158 also indicate that the woman's decision was not based on any
159 undue influence from any person to discourage her from viewing
160 or hearing the fetal heartbeat and that she declined of her own
161 free will.

162 d.e. The medical risks to the woman and the unborn human
163 being fetus of carrying the pregnancy to term.

164
165 The physician may provide the information required in this
166 subparagraph within 24 hours before the procedure if requested
167 by the woman at the time she schedules or arrives for her
168 appointment to obtain an abortion and if she presents to the
169 physician a copy of a restraining order, police report, medical
170 record, or other court order or documentation evidencing that
171 she is obtaining the abortion because she is a victim of rape,
172 incest, domestic violence, or human trafficking.

173 2. Printed materials prepared and provided by the
174 department have been provided to the pregnant woman, if she

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175 chooses to view these materials, including:

176 a. A description of the unborn human being ~~fetus~~, including
177 a description of the various stages of development.

178 b. A list of entities that offer alternatives to
179 terminating the pregnancy.

180 c. Detailed information on the availability of medical
181 assistance benefits for prenatal care, childbirth, and neonatal
182 care.

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

186

187 Nothing in this paragraph is intended to prohibit a physician
188 from providing any additional information which the physician
189 deems material to the woman's informed decision to terminate her
190 pregnancy.

191 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD
192 TRIMESTER.—If a termination of pregnancy is performed in the
193 third trimester, the physician performing the termination of
194 pregnancy must exercise the same degree of professional skill,
195 care, and diligence to preserve the life and health of the
196 unborn human being ~~fetus~~ which the physician would be required
197 to exercise in order to preserve the life and health of an
198 unborn human being ~~a fetus~~ intended to be born and not aborted.
199 However, if preserving the life and health of the unborn human
200 being ~~fetus~~ conflicts with preserving the life and health of the
201 pregnant woman, the physician must consider preserving the
202 woman's life and health the overriding and superior concern.

203 (6) EXPERIMENTATION ON UNBORN HUMAN BEING ~~FETUS~~ PROHIBITED;

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204 EXCEPTION.—No person shall use any live unborn human being ~~fetus~~
205 or live, premature infant for any type of scientific, research,
206 laboratory, or other kind of experimentation either prior to or
207 subsequent to any termination of pregnancy procedure except as
208 necessary to protect or preserve the life and health of such
209 unborn human being ~~fetus~~ or premature infant.

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

212 (a) Any person who willfully performs, or actively
213 participates in, a termination of pregnancy in violation of the
214 requirements of this section or s. 390.01112 commits a felony of
215 the third degree, punishable as provided in s. 775.082, s.
216 775.083, or s. 775.084.

217 (b) Any person who knowingly or purposefully performs or
218 induces an abortion on a pregnant woman with the specific intent
219 of causing or abetting the termination of the life of the unborn
220 human being whose fetal heartbeat has been detected pursuant to
221 sub-subparagraph (3)(a)1.c. commits a felony of the third
222 degree, punishable as provided in s. 775.082, s. 775.083, or s.
223 775.084.

224 (c) ~~(b)~~ Any person who performs, or actively participates
225 in, a termination of pregnancy in violation of this section or
226 s. 390.01112 which results in the death of the woman commits a
227 felony of the second degree, punishable as provided in s.
228 775.082, s. 775.083, or s. 775.084.

229 (11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
230 RELIEF.—

231 (a) The father, if married to the mother at the time she
232 receives a partial-birth abortion, and, if the mother has not

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233 attained the age of 18 years at the time she receives a partial-
 234 birth abortion, the maternal grandparents of the unborn human
 235 being ~~fetus~~ may, in a civil action, obtain appropriate relief,
 236 unless the pregnancy resulted from the plaintiff's criminal
 237 conduct or the plaintiff consented to the abortion.

238 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a
 239 local governmental entity, or a managed care plan providing
 240 services under part IV of chapter 409 may not expend funds for
 241 the benefit of, pay funds to, or initiate or renew a contract
 242 with an organization that owns, operates, or is affiliated with
 243 one or more clinics that are licensed under this chapter and
 244 perform abortions unless one or more of the following applies:

245 (a) All abortions performed by such clinics are:

246 1. On unborn human beings ~~fetuses~~ that are conceived
 247 through rape or incest; or

248 2. Are medically necessary to preserve the life of the
 249 pregnant woman or to avert a serious risk of substantial and
 250 irreversible physical impairment of a major bodily function of
 251 the pregnant woman, other than a psychological condition.

252 Section 3. Section 390.01112, Florida Statutes, is amended
 253 to read:

254 390.01112 Termination of pregnancies during viability or
 255 after fetal heartbeat is detected.—

256 (1) No termination of pregnancy shall be performed on any
 257 woman ~~human being~~ if the physician determines that, in
 258 reasonable medical judgment, the unborn human being ~~fetus~~ has
 259 achieved viability or has a detectable fetal heartbeat, unless:

260 (a) Two physicians certify in writing that, in reasonable
 261 medical judgment, the termination of the pregnancy is necessary

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262 to save the pregnant woman's life or avert a serious risk of
263 substantial and irreversible physical impairment of a major
264 bodily function of the pregnant woman other than a psychological
265 condition; or

266 (b) The physician certifies in writing that, in reasonable
267 medical judgment, there is a medical necessity for legitimate
268 emergency medical procedures for termination of the pregnancy to
269 save the pregnant woman's life or avert a serious risk of
270 imminent substantial and irreversible physical impairment of a
271 major bodily function of the pregnant woman other than a
272 psychological condition, and another physician is not available
273 for consultation.

274 (2) Before performing a termination of pregnancy, a
275 physician must determine whether ~~if~~ the unborn human being:

276 (a) ~~fetus~~ Is viable by, at a minimum, performing a medical
277 examination of the pregnant woman and, to the maximum extent
278 possible through reasonably available tests and the ultrasound
279 required under s. 390.0111(3), an examination of the unborn
280 human being ~~fetus~~.

281 (b) Has a detectable fetal heartbeat.

282
283 The physician must document in the pregnant woman's medical file
284 the physician's determination and the method, equipment, ~~fetal~~
285 measurements, and any other information used to determine the
286 viability of the unborn human being and whether the unborn human
287 being has a detectable fetal heartbeat ~~fetus~~.

288 (3) If a termination of pregnancy is performed during
289 viability or after a fetal heartbeat has been detected, the
290 physician performing the termination of pregnancy must exercise

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291 the same degree of professional skill, care, and diligence to
292 preserve the life and health of the unborn human being ~~fetus~~
293 that the physician would be required to exercise in order to
294 preserve the life and health of an unborn human being ~~a fetus~~
295 intended to be born and not aborted. However, if preserving the
296 life and health of the unborn human being ~~fetus~~ conflicts with
297 preserving the life and health of the woman, the physician must
298 consider preserving the woman's life and health the overriding
299 and superior concern.

300 Section 4. Paragraphs (d), (e), (f), and (h) of subsection
301 (3) and subsections (6) and (7) of section 390.012, Florida
302 Statutes, are amended to read:

303 390.012 Powers of agency; rules; disposal of ~~fetal~~
304 remains.-

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

309 (d) Rules relating to the medical screening and evaluation
310 of each abortion clinic patient. At a minimum, these rules shall
311 require:

312 1. A medical history including reported allergies to
313 medications, antiseptic solutions, or latex; past surgeries; and
314 an obstetric and gynecological history.

315 2. A physical examination, including a bimanual examination
316 estimating uterine size and palpation of the adnexa.

317 3. The appropriate laboratory tests, including:

318 a. Urine or blood tests for pregnancy performed before the
319 abortion procedure.

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- 320 b. A test for anemia.
- 321 c. Rh typing, unless reliable written documentation of
322 blood type is available.
- 323 d. Other tests as indicated from the physical examination.
- 324 4. An ultrasound evaluation for all patients. The rules
325 shall require that if a person who is not a physician performs
326 an ultrasound examination, that person shall have documented
327 evidence that he or she has completed a course in the operation
328 of ultrasound equipment as prescribed in rule. The rules shall
329 require clinics to be in compliance with s. 390.0111.
- 330 5. That the physician is responsible for estimating the
331 gestational age of the unborn human being ~~fetus~~ based on the
332 ultrasound examination and obstetric standards in keeping with
333 established standards of care regarding the estimation of the
334 gestational ~~fetal~~ age of the unborn human being as defined in
335 rule and shall write the estimate in the patient's medical
336 history. The physician shall keep original prints of each
337 ultrasound examination of a patient in the patient's medical
338 history file.
- 339 (e) Rules relating to the abortion procedure. At a minimum,
340 these rules shall require:
- 341 1. That a physician, registered nurse, licensed practical
342 nurse, advanced practice registered nurse, or physician
343 assistant is available to all patients throughout the abortion
344 procedure.
- 345 2. Standards for the safe conduct of abortion procedures
346 that conform to obstetric standards in keeping with established
347 standards of care regarding the estimation of the gestational
348 ~~fetal~~ age of the unborn human being as defined in rule.

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349 3. Appropriate use of general and local anesthesia,
350 analgesia, and sedation if ordered by the physician.

351 4. Appropriate precautions, such as the establishment of
352 intravenous access at least for patients undergoing post-first
353 trimester abortions.

354 5. Appropriate monitoring of the vital signs and other
355 defined signs and markers of the patient's status throughout the
356 abortion procedure and during the recovery period until the
357 patient's condition is deemed to be stable in the recovery room.

358 (f) Rules that prescribe minimum recovery room standards.
359 At a minimum, these rules must require that:

360 1. Postprocedure recovery rooms be supervised and staffed
361 to meet the patients' needs.

362 2. Immediate postprocedure care consist of observation in a
363 supervised recovery room for as long as the patient's condition
364 warrants.

365 3. A registered nurse, licensed practical nurse, advanced
366 practice registered nurse, or physician assistant who is trained
367 in the management of the recovery area and is capable of
368 providing basic cardiopulmonary resuscitation and related
369 emergency procedures remain on the premises of the abortion
370 clinic until all patients are discharged.

371 4. A physician sign the discharge order and be readily
372 accessible and available until the last patient is discharged to
373 facilitate the transfer of emergency cases if hospitalization of
374 the patient or the unborn human being ~~viable fetus~~ is necessary.

375 5. A physician discuss Rho(D) immune globulin with each
376 patient for whom it is indicated and ensure that it is offered
377 to the patient in the immediate postoperative period or will be

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378 available to her within 72 hours after completion of the
379 abortion procedure. If the patient refuses the Rho(D) immune
380 globulin, she and a witness must sign a refusal form approved by
381 the agency which must be included in the medical record.

382 6. Written instructions with regard to postabortion coitus,
383 signs of possible problems, and general aftercare which are
384 specific to the patient be given to each patient. The
385 instructions must include information regarding access to
386 medical care for complications, including a telephone number for
387 use in the event of a medical emergency.

388 7. A minimum length of time be specified, by type of
389 abortion procedure and duration of gestation, during which a
390 patient must remain in the recovery room.

391 8. The physician ensure that, with the patient's consent, a
392 registered nurse, licensed practical nurse, advanced practice
393 registered nurse, or physician assistant from the abortion
394 clinic makes a good faith effort to contact the patient by
395 telephone within 24 hours after surgery to assess the patient's
396 recovery.

397 9. Equipment and services be readily accessible to provide
398 appropriate emergency resuscitative and life support procedures
399 pending the transfer of the patient or the unborn human being
400 ~~viable fetus~~ to the hospital.

401 (h) Rules to prescribe minimum abortion clinic incident
402 reporting. At a minimum, these rules shall require that:

403 1. The abortion clinic records each incident that results
404 in serious injury to a patient or an unborn human being ~~a viable~~
405 ~~fetus~~ at an abortion clinic and shall report an incident in
406 writing to the agency within 10 days after the incident occurs.

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407 For the purposes of this paragraph, "serious injury" means an
408 injury that occurs at an abortion clinic and that creates a
409 serious risk of substantial impairment of a major bodily organ.

410 2. If a patient's death occurs, other than the ~~a fetal~~
411 death of an unborn human being properly reported pursuant to
412 law, the abortion clinic reports it to the department not later
413 than the next department workday.

414 (6) The agency may adopt and enforce rules, in the interest
415 of protecting the public health, to ensure the prompt and proper
416 disposal of ~~fetal~~ remains and tissue resulting from pregnancy
417 termination.

418 (7) If an owner, operator, or employee of an abortion
419 clinic fails to dispose of ~~fetal~~ remains and tissue in a
420 sanitary manner pursuant to s. 381.0098, rules adopted
421 thereunder, and rules adopted by the agency pursuant to this
422 section, the license of such clinic may be suspended or revoked,
423 and such person commits a misdemeanor of the first degree,
424 punishable as provided in s. 775.082 or s. 775.083.

425 Section 5. This act shall take effect July 1, 2019.