

CHAPTER 97-151

Committee Substitute for House Bill No. 1205

An act relating to informed consent; creating the “Woman’s Right-To-Know-Act; amending and renumbering s. 390.001, F.S.; requiring the voluntary and informed consent of a woman upon whom a termination of pregnancy is to be performed or induced; providing requirements of informed consent; providing that a physician provide certain information; requiring written acknowledgment that the pregnant woman has been provided with certain information; providing requirements relating to an emergency procedure; providing for disciplinary actions; providing a defense; amending and renumbering s. 390.002, F.S.; conforming references to the Department of Health; amending s. 390.011, F.S.; expanding scope and revising definitions; amending ss. 390.012, 390.014, 390.015, 390.016, 390.017, 390.018, 390.019, and 390.021, F.S.; conforming references to the department, the Agency for Health Care Administration, and the chapter; providing an effective date.

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

Section 1. This act may be cited as the “Woman’s Right-To-Know Act.”

Section 2. Section 390.001, Florida Statutes, is renumbered as section 390.0111, Florida Statutes, and amended to read:

390.0111 ~~390.001~~ Termination of pregnancies.—

~~(1) DEFINITIONS.—As used in this section, unless the context clearly requires otherwise:~~

~~(a) “Physician” means a doctor of medicine or osteopathic medicine licensed by the state under chapter 458 or chapter 459 or a physician practicing medicine or osteopathic medicine in the employment of the United States or this state.~~

~~(b) “Approved facility” means:~~

~~1. A hospital licensed by the state; or~~

~~2. A medical facility licensed by the Department of Health and Rehabilitative Services pursuant to rules adopted for that purpose, provided such rules shall require regular evaluation and review procedures.~~

~~(1)(2) TERMINATION IN THIRD LAST TRIMESTER; WHEN ALLOWED.—No termination of pregnancy shall be performed on any human being in the third last trimester of pregnancy unless:~~

~~(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman; or~~

(b) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of pregnancy in the last trimester, and another physician is not available for consultation.

~~(2)(3)~~ PERFORMANCE BY PHYSICIAN REQUIRED.—No termination of pregnancy shall be performed at any time except by a physician as defined in this section.

~~(3)(4)~~ CONSENTS REQUIRED.—A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.

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

1. The physician who is to perform the procedure, or the referring physician, has, at a minimum, orally, in person, informed the woman of:

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

b. The probable gestational age of the fetus at the time the termination of pregnancy is to be performed.

c. The medical risks to the woman and fetus of carrying the pregnancy to term.

2. Printed materials prepared and provided by the department have been provided to the pregnant woman, if she chooses to view these materials, including:

a. A description of the fetus.

b. A list of agencies that offer alternatives to terminating the pregnancy.

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

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

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

~~(a) If the woman is married, the husband shall be given notice of the proposed termination of pregnancy and an opportunity to consult with the wife concerning the procedure. The physician may rely on a written statement of the wife that such notice and opportunity have been given, or he or~~

~~she may rely on the written consent of the husband to the proposed termination of pregnancy. If the husband and wife are separated or estranged, the provisions of this paragraph for notice or consent shall not be required. The physician may rely upon a written statement from the wife that the husband is voluntarily living apart or estranged from her.~~

~~(b) In the event a medical emergency exists and a physician cannot comply with the requirements for informed consent the above requirements have not been complied with, a physician may terminate a pregnancy if he or she has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that to a reasonable degree of medical certainty the continuation of the pregnancy would threaten the life of the pregnant woman. In the event no second physician is available for a corroborating opinion, the physician may proceed but shall be document reasons for the medical necessity in the patient's medical records.~~

~~(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015. Substantial compliance or reasonable belief that complying with the requirements of informed consent would threaten the life or health of the patient is a defense to any action brought under this paragraph.~~

~~(4)(5) 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 medical probability be continued indefinitely outside the womb. Notwithstanding the provisions of this subsection, the woman's life and health shall constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.~~

~~(5)(6) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—No person shall use any live fetus or live, premature infant for any type of scientific, research, laboratory, or other kind of experimentation either prior to or subsequent to any termination of pregnancy procedure except as necessary to protect or preserve the life and health of such fetus or premature infant.~~

~~(6)(7) FETAL REMAINS.—Fetal remains shall be disposed of in a sanitary and appropriate manner and in accordance with standard health practices, as provided by rule of the department of Health and Rehabilitative Services. Failure to dispose of fetal remains in accordance with department rules is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(7)(8) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE.—Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any~~

person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital, nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who shall state an objection to such procedure on moral or religious grounds shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

~~(8)~~⁽⁹⁾ EXCEPTION.—The provisions of this section shall not apply to the performance of a procedure which terminates a pregnancy in order to deliver a live child.

~~(9)~~⁽¹⁰⁾ PENALTIES FOR VIOLATION.—Except as provided in subsections (3) and (6):

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

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

Section 3. Section 390.002, Florida Statutes, 1996 Supplement, is renumbered as section 390.0112, Florida Statutes, and subsections (1) and (4) of said section are amended, to read:

390.0112 ~~390.002~~ Termination of pregnancies; reporting.—

(1) The director of any medical facility in which any pregnancy is terminated shall submit a monthly report which contains the number of procedures performed, the reason for same, and the period of gestation at the time such procedures were performed to the department of ~~Health and Rehabilitative Services~~. The department shall be responsible for keeping such reports in a central place from which statistical data and analysis can be made.

(4) Any person required under this section to file a report or keep any records who willfully fails to file such report or keep such records may be subject to a \$200 fine for each violation. The department of ~~Health and Rehabilitative Services~~ shall be required to impose such fines when reports or records required under this section have not been timely received. For purposes of this section, timely received is defined as 30 days following the preceding month.

Section 4. Section 390.011, Florida Statutes, is amended to read:

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

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

(2) “Abortion clinic” or “clinic” means any facility in which abortions are performed. The term does not include: other than

(a) A hospital; or

(b) A physician’s office, provided that the office ~~which~~ is not used primarily for the performance of abortions.

(3) “Agency” means the Agency for Health Care Administration.

(4)(3) “Department” means the Department of Health ~~and Rehabilitative Services.~~

(5)(4) “Hospital” means a facility licensed under chapter 395.

(6)(5) “Physician” means a physician licensed under chapter 458 or chapter 459 or a physician practicing medicine or osteopathy in the employment of the United States ~~or this state.~~

(7)(6) “Third trimester” means the weeks of pregnancy after the 24th week of pregnancy.

Section 5. Subsections (1) and (2) of section 390.012, Florida Statutes, are amended to read:

390.012 Powers of agency ~~department~~; rules; disposal of fetal remains.—

(1) The agency ~~department~~ shall have the authority to develop and enforce rules for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics. These rules shall be comparable to rules which apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions. The rules shall be reasonably related to the preservation of maternal health of the clients. The rules shall not impose a legally significant burden on a woman’s freedom to decide whether to terminate her pregnancy. The rules shall provide for:

(a) The performance of pregnancy termination procedures only by a licensed physician.

(b) The making, protection, and preservation of patient records, which shall be treated as medical records under chapter 458.

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

Section 6. Subsection (1) of section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees, display, etc.—

(1) No abortion clinic shall operate in this state without a currently effective license issued by the agency ~~Department of Health and Rehabilitative Services.~~

Section 7. Subsection (1) of section 390.015, Florida Statutes, is amended to read:

390.015 Application for license.—

(1) An application for a license to operate an abortion clinic shall be made to the ~~agency department~~ on a form furnished by it for that purpose. The application shall be accompanied by the applicable license fee.

Section 8. Section 390.016, Florida Statutes, is amended to read:

390.016 Expiration of license; renewal.—

(1) A license issued for the operation of an abortion clinic, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal of such license shall be submitted to the agency department on a form furnished by the agency department. The license may be renewed if the applicant has met the requirements of this chapter act and of all rules adopted pursuant to this chapter act.

(2) A licensee against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license which shall be effective until final disposition of the proceeding by the agency department. If judicial relief is sought from the order resulting from the revocation or suspension proceeding, the court having jurisdiction may order that the conditional license be continued for the duration of the judicial proceeding.

Section 9. Section 390.017, Florida Statutes, is amended to read:

390.017 Grounds for suspension or revocation of license.—The license of an abortion clinic may be revoked, or may be suspended for a period not to exceed 2 years, or the agency department may refuse to renew such license, if it is determined in accordance with the provisions of chapter 120 that the clinic has violated a provision of this chapter act or any rule or lawful order of the agency department.

Section 10. Section 390.018, Florida Statutes, is amended to read:

390.018 Administrative penalty in lieu of revocation or suspension.—If the agency department finds that one or more grounds exist for the revocation or suspension of a license issued to an abortion clinic, the agency department may, in lieu of such suspension or revocation, impose a fine upon the clinic in an amount not to exceed \$1,000 for each violation. The fine shall be paid to the agency department within 60 days from the date of entry of the administrative order. If the licensee fails to pay the fine in its entirety to the agency department within the period allowed, the license of the licensee shall stand suspended, revoked, or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further administrative or judicial proceedings.

Section 11. Section 390.019, Florida Statutes, is amended to read:

390.019 Inspections; investigations.—The agency department shall make or shall cause to be made an inspection of an abortion clinic prior to licensing such clinic, and it shall make such additional inspections and investigations as may be necessary to assure compliance with this chapter act.

Section 12. Section 390.021, Florida Statutes, is amended to read:

390.021 Injunction.—In addition to the other powers provided by this chapter act, the agency department may institute injunction proceedings in a court of competent jurisdiction to restrain or prevent the establishment or operation of an abortion clinic which does not have a license or is in violation of any provision of this chapter act or of any rules adopted pursuant to this chapter act.

Section 13. This act shall take effect July 1, 1997.

Became a law without the Governor's approval June 5, 1997.

Filed in Office Secretary of State May 23, 1997.