

CHAPTER 98-1

Committee Substitute for House Bill No. 1227

An act relating to termination of pregnancies; renumbering and amending s. 390.001, F.S.; revising provisions relating to consents required prior to a termination of pregnancy; prohibiting partial-birth abortion; providing a penalty; providing civil liability; providing for relief; renumbering s. 390.002, F.S.; amending s. 390.011, F.S.; expanding scope of definitions; defining “partial-birth abortion”; providing an effective date.

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

Section 1. 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 third 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 s. 390.011 ~~this section.~~~~

~~(3)(4) CONSENTS REQUIRED.—Prior to terminating a pregnancy, the physician shall obtain the written informed consent of the pregnant woman~~

or, in the case of a mental incompetent, the written consent of her court-appointed guardian.

~~(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 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.~~

~~(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) PARTIAL-BIRTH ABORTION PROHIBITED; EXCEPTION.—

(a) No physician shall knowingly perform a partial-birth abortion.

(b) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for a conspiracy to violate the provisions of this section.

(c) This subsection shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose.

(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.

(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.

(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.

(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.

(10) PENALTIES FOR VIOLATION.—Except as provided in subsection (7):

(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.

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

(a) The father, if married to the mother at the time she receives a partial-birth abortion, and, if the mother has not attained the age of 18 years at the time she receives a partial-birth abortion, the maternal grandparents of the fetus may, in a civil action, obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

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

1. Monetary damages for all injuries, psychological and physical, occasioned by the violation of subsection (5).

2. Damages equal to three times the cost of the partial-birth abortion.

Section 2. Section 390.002, Florida Statutes, 1996 Supplement, is re-numbered as section 390.0112, Florida Statutes.

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

390.011 Definitions.—As used in this chapter ~~act~~:

(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 other than a hospital or a physician’s office which is not used primarily for the performance of abortions.

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

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

(5) “Partial-birth abortion” means a termination of pregnancy in which the physician performing the termination of pregnancy partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(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 4. This act shall take effect upon becoming a law.

Vetoed by the Governor May 23, 1997.

Passed the House over the veto March 4, 1998.

Passed the Senate over the veto March 11, 1998.

Filed in Office Secretary of State March 12, 1998.