

CHAPTER 2014-137

Committee Substitute for House Bill No. 1047

An act relating to the termination of pregnancies; amending s. 390.011, F.S.; defining the terms “reasonable medical judgment,” “standard medical measure,” and “viability”; amending s. 390.0111, F.S.; revising the circumstances under which a pregnancy in the third trimester may be terminated; providing the standard of medical care for the termination of a pregnancy during the third trimester; providing criminal penalties for a violation of s. 390.01112, F.S.; authorizing administrative discipline for a violation of s. 390.01112, F.S., by certain licensed professionals; creating s. 390.01112, F.S.; prohibiting the termination of a viable fetus; providing exceptions; requiring a physician to perform certain examinations to determine the viability of a fetus; providing the standard of care for the termination of a viable fetus; amending s. 797.03, F.S.; prohibiting an abortion of a viable fetus outside of a hospital; providing for severability; providing for a contingent future repeal and reversion of law; providing an effective date.

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

Section 1. Subsection (9) of section 390.011, Florida Statutes, is renumbered as subsection (11), and new subsections (9), (10), and (12) are added to that section, to read:

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

(9) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(10) “Standard medical measure” means the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life-sustaining support, if the fetus were born at the same stage of fetal development.

(12) “Viable” or “viability” means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

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

390.0111 Termination of pregnancies.—

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

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

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

(4) **STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER DURING VIABILITY.**—If a termination of pregnancy is performed in the third trimester, the physician performing during viability, no person who performs or induces the termination of pregnancy must exercise the same shall fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician such person would be required to exercise in order to preserve the life and health of a any fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the pregnant woman, the physician must consider preserving the woman's life and health the overriding and superior concern “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.

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

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

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

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

390.01112 Termination of pregnancies during viability.—

(1) No termination of pregnancy shall be performed on any human being if the physician determines that, in reasonable medical judgment, the fetus has achieved viability, unless:

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

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

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

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

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

797.03 Prohibited acts; penalties.—

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

Section 5. Severability and reversion.—

(1) If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.