

CHAPTER 390

TERMINATION OF PREGNANCIES

- 390.001 Termination of pregnancies.
- 390.002 Termination of pregnancies; reporting.
- 390.011 Definitions.
- 390.012 Powers of department; rules; disposal of fetal remains.
- 390.013 Effective date of rules.
- 390.014 Licenses; fees, display, etc.
- 390.015 Application for license.
- 390.016 Expiration of license; renewal.
- 390.017 Grounds for suspension or revocation of license.
- 390.018 Administrative penalty in lieu of revocation or suspension.
- 390.019 Inspections; investigations.
- 390.021 Injunction.
- 390.025 Abortion referral or counseling agencies; penalties.

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.

(2) **TERMINATION IN LAST TRIMESTER; WHEN ALLOWED.**—No termination of pregnancy shall be performed on any human being in the 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.

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

(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.

(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.

(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.—

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

History.—s. 1, ch. 79-302; s. 1, ch. 80-208; s. 6, ch. 88-97; s. 6, ch. 91-223; s. 64, ch. 91-224; s. 694, ch. 95-148.

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.

(2) If the termination of pregnancy is not performed in a medical facility, the physician performing the procedure shall be responsible for reporting such information as required in subsection (1).

(3) Reports submitted pursuant to this section shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding. This exemption is subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

(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.

History.—s. 2, ch. 79-302; s. 1, ch. 90-336.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

390.011 Definitions.—As used in this 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) "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.

(6) "Third trimester" means the weeks of pregnancy after the 24th week of pregnancy.

History.—s. 1, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

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

(1) The 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 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.

(3) If any owner, operator, or employee of an abortion clinic fails to dispose of fetal remains and tissue in a manner consistent with the disposal of other human tissue in a competent professional manner, the license of such clinic may be suspended or revoked, and such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 78-382; s. 1, ch. 80-413; s. 1, ch. 86-286; ss. 1, 4, 5, ch. 88-97; s. 65, ch. 91-224; s. 4, ch. 91-429.

390.013 Effective date of rules.—Any abortion clinic which is in operation at the time of adoption of any applicable rule under this act shall be given a reasonable time under the particular circumstances, not to exceed 1 year from the date of such adoption, within which to comply with such rule.

History.—s. 3, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

390.014 Licenses; fees, display, etc.—

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

(2) A separate license shall be required for each clinic maintained on separate premises, even though it is operated by the same management as another clinic; but a separate license shall not be required for separate buildings on the same premises.

(3) The annual license fee required for a clinic shall be nonrefundable and shall be reasonably calculated to cover the cost of regulation under this chapter, but may not be less than \$35 nor more than \$250.

(4) Counties and municipalities applying for licenses under this act shall be exempt from the payment of the license fees.

(5) The license shall be displayed in a conspicuous place inside the clinic.

(6) A license shall be valid only for the clinic to which it is issued, and it shall not be subject to sale, assignment, or other transfer, voluntary or involuntary. No license shall be valid for any premises other than those for which it was originally issued.

History.—s. 4, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 5, ch. 91-282; s. 4, ch. 91-429.

390.015 Application for license.—

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

(2) The application, which shall be made under oath, shall contain, among other things, the following:

(a) The name and address of the applicant if the applicant is an individual; or if the applicant is a firm, partnership, or association, the name and address of each member thereof; or if the applicant is a corporation, its name and address and the name and address of each of its officers.

(b) The name by which the clinic is to be known.

(c) The location of the clinic for which application is made and a statement that local zoning ordinances permit such location.

(d) The name of the person or persons under whose management or supervision the clinic will be operated.

History.—s. 5, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

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 department on a form furnished by the department. The license may be renewed if the applicant has met the requirements of this act and of all rules adopted pursuant to this 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 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.

History.—s. 6, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

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 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 act or any rule or lawful order of the department.

History.—s. 7, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

390.018 Administrative penalty in lieu of revocation or suspension.—If the department finds that one or more grounds exist for the revocation or suspension of a license issued to an abortion clinic, the 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 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 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.

History.—s. 8, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

390.019 Inspections; investigations.—The 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 act.

History.—s. 9, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

390.021 Injunction.—In addition to the other powers provided by this act, the 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 act or of any rules adopted pursuant to this act.

History.—s. 11, ch. 78-382; s. 1, ch. 86-286; ss. 4, 5, ch. 88-97; s. 4, ch. 91-429.

390.025 Abortion referral or counseling agencies; penalties.—

(1) As used in this section, an "abortion referral or counseling agency" is any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions.

(2) An abortion referral or counseling agency, before making a referral or aiding a person in obtaining an abortion, shall furnish such person with a full and detailed explanation of abortion, including the effects of and alternatives to abortion. If the person advised is a minor, a good faith effort shall be made by the referral or counseling agency to furnish such information to the parents or guardian of the minor. No abortion referral or counseling agency shall charge or accept any fee, kickback, or compensation of any nature from a physician, hospital, clinic, or other medical facility for referring a person thereto for an abortion.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 79-302; s. 66, ch. 91-224.