

# Florida's New ABORTION LAW

Christopher L. Nuland, JD

FAFP Legal Counsel

Jacksonville, FL

Updated November 12, 2024



Christopher L. Nuland, JD

“With the US Supreme Court having overturned *Roe v. Wade* through the Dodd decision, as well as the Florida Supreme Court’s decision that a Floridian’s Right to Privacy does not extend to the right to an abortion, opportunities to judicially challenge the new law have been effectively exhausted.”

As most are aware, in 2023 the Florida Legislature passed one of the strictest abortion bans in the nation. Although implementation of the law was delayed by court challenges, Florida Statute 390.0111 is now in effect, and it prevents the termination of a fetus after six weeks of gestation 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.

(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. Neither the statute nor administrative rules define “reasonable medical judgment” or “medical necessity,” so physicians should ensure their ability to substantiate their clinical decision making.

(c) The pregnancy has not progressed to the third trimester and two physicians certify in writing that, in reasonable medical judgment, the fetus has a fatal fetal abnormality.

(d) The pregnancy is the result of rape, incest, or human trafficking and the gestational age of the fetus is not more than 15 weeks as determined by the physician. At the time the woman schedules or arrives for her appointment to obtain the abortion, she must provide a copy of a restraining order, police report, medical record, or other court order or documentation providing evidence that she is obtaining the termination of pregnancy because she is a victim of rape, incest, or human trafficking. If the woman is 18 years of age or older, the physician must report any known or suspected human trafficking to a local law enforcement agency. If the woman is a minor, the physician must report the incident of rape, incest, or human trafficking to the central abuse hotline as required by s. 39.201 (1-800-962-2873).

It is apparent that the law is designed to limit the availability of the procedure, as the requirements for two physicians to certify as to the medical necessity of a termination and the necessity to report cases of rape, incest, or sexual trafficking to authorities all discourage patients and physicians from availing themselves to the procedure. Furthermore, the law also requires that the termination be performed by a physician, further limiting the availability of the procedure.

Fortunately, the Agency for Health Care Administration (AHCA) has quickly understood that the law could have unintended consequences, and in May 2024 issued emergency rules to provide two additional important additional exceptions. First, the treatment of “premature rupture of membranes” will not be deemed an abortion and is therefore exempt from the provisions FS 390.011. Likewise, treatment of ectopic pregnancies and trophoblastic tumors are not to be deemed abortions and are therefore not subject to the six-week ban.

It is important to note that violations of the law may constitute a third-degree felony and possible civil penalties. Moreover, violations of the law also may be referred to the Boards of Medicine for administrative discipline.

With the US Supreme Court having overturned *Roe v. Wade* through the Dodd decision, as well as the Florida Supreme Court’s decision that a Floridian’s Right to Privacy does not extend to the right to an abortion, opportunities to judicially challenge the new law have been effectively exhausted.

With the defeat of **Amendment 4** on Election Day, Florida’s six week ban on abortions remains the law. While a physician may not perform or induce a termination after that time (with limited exceptions), there currently is no prohibition on counseling a patient as to her options, including the possibility of obtaining an abortion in a state where such a ban does not exist.

Members with questions may contact the FAFP counsel at [nulandlaw@aol.com](mailto:nulandlaw@aol.com).