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LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/18/2020 | . |       |
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The Committee on Criminal Justice (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 383.61, Florida Statutes, is created to  
read:

383.61 Assisted reproduction facilities.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Assisted reproductive technology" means those

procreative procedures which involve the laboratory handling of



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11 human eggs, preembryos, or sperm, including, but not limited to,  
12 in vitro fertilization embryo transfer, gamete intrafallopian  
13 transfer, pronuclear stage transfer, tubal embryo transfer, and  
14 zygote intrafallopian transfer.

15 (b) "Commissioning party" means the intended parent or  
16 parents of a child who will be conceived by means of assisted  
17 reproductive technology.

18 (c) "Donor" means a person who donates reproductive  
19 material, regardless of whether for personal use or  
20 compensation.

21 (d) "Donor bank" means any facility that collects  
22 reproductive material from donors for use by a fertility clinic.

23 (e) "Egg" means the unfertilized female reproductive cell.

24 (f) "Fertility clinic" means a facility in which  
25 reproductive materials are subject to assisted reproductive  
26 technology for the purpose of implantation.

27 (g) "Health care practitioner" has the same meaning as  
28 provided in s. 456.001.

29 (h) "Preembryo" means the product of fertilization of an  
30 egg by a sperm until the appearance of the embryonic axis.

31 (i) "Recipient" means a person who receives, through  
32 implantation, reproductive material from a donor.

33 (j) "Reproductive material" means any human "egg,"  
34 "preembryo," or "sperm."

35 (k) "Sperm" means the male reproductive cell.

36 (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or  
37 donor must enter into a contract with the donor bank, fertility  
38 clinic, or health care practitioner before he or she may make a  
39 donation of reproductive material. The contract must, at



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40 minimum, indicate what must be done with the reproductive  
41 material if:

42 1. The donor dies or becomes incapacitated;

43 2. A designated recipient for the donation dies or becomes  
44 incapacitated;

45 3. The commissioning party separate or their marriage is  
46 dissolved;

47 4. One member of the commissioning party dies or becomes  
48 incapacitated;

49 5. The reproductive material is unused, including whether  
50 it may be disposed of, offered to a different recipient, or  
51 donated to science; and

52 6. Any other unforeseen circumstance occurs.

53 (b) The donor bank, fertility clinic, or health care  
54 practitioner must ensure that each donation is clearly labeled  
55 according to the terms of each donor or commissioning party's  
56 contract.

57 (c) The donor bank, fertility clinic, or health care  
58 practitioner must ensure that the donation is implanted,  
59 returned, disposed of, or stored according to the terms of the  
60 contract.

61 (3) BEST PRACTICE POLICIES.—

62 (a) By January 1, 2021, each donor bank, fertility clinic  
63 and health care practitioner that provides assisted reproductive  
64 technology in this state, shall develop a written best practices  
65 policy consistent with 42 U.S.C. part 263a(f).

66 (b) The best practices policy must be submitted to the  
67 appropriate licensing agency or department annually for review.

68 (c) All reproductive material stored by a donor bank,



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69 fertility clinic, or health care practitioner must be clearly  
70 labeled.

71 (d) A donor bank, fertility clinic, or health care  
72 practitioner must comply with the terms of the contract,  
73 pursuant to subsection (2).

74 (e) A donor bank, fertility clinic, or health care  
75 practitioner must maintain all records for at least 30 years.

76 (f) A health care practitioner may not implant or  
77 inseminate a recipient or cause a recipient to be implanted or  
78 inseminated with reproductive material of the health care  
79 practitioner.

80 (4) INSPECTIONS.—The Agency for Health Care Administration  
81 shall perform annual inspections of donor banks and fertility  
82 clinics without notice.

83 (5) PENALTIES.—A donor bank or fertility clinic in  
84 violation of subsections (2) or (3) of this section are subject  
85 to penalties provided in s. 400.995.

86 Section 2. Paragraph (pp) and paragraph (qq) are added to  
87 subsection (1) of section 456.072, Florida Statutes, to read:

88 456.072 Grounds for discipline; penalties; enforcement.—

89 (1) The following acts shall constitute grounds for which  
90 the disciplinary actions specified in subsection (2) may be  
91 taken:

92 (pp) Intentionally implanting or inseminating a recipient  
93 or causing a recipient to be implanted or inseminated with the  
94 reproductive material, as defined in s. 383.61, of a donor  
95 without the recipient's consent.

96 (qq) A violation of s. 383.61.

97 Section 3. Section 456.51, Florida Statutes, is created to



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98 read:

99 456.51 Health care practitioners; consent for pelvic  
100 examinations.-

101 (1) As used in this section, the term "pelvic examination"  
102 means the direct palpation of the organs of the female internal  
103 reproductive system.

104 (2) A health care practitioner may not perform a pelvic  
105 examination on a patient without the written consent of the  
106 patient or the patient's legal representative executed specific  
107 to, and expressly identifying, the pelvic examination, unless:

108 (a) A court orders performance of the pelvic examination  
109 for the collection of evidence; or

110 (b) The pelvic examination is immediately necessary to  
111 avert a serious risk of imminent substantial and irreversible  
112 physical impairment of a major bodily function of the patient.

113 Section 4. Paragraph (ww) and paragraph (xx) are added to  
114 subsection (1) of section 458.331, Florida Statutes, to read:

115 458.331 Grounds for disciplinary action; action by the  
116 board and department.-

117 (1) The following acts constitute grounds for denial of a  
118 license or disciplinary action, as specified in s. 456.072(2):

119 (ww) Intentionally implanting or inseminating a recipient  
120 or causing a recipient to be implanted or inseminated with the  
121 reproductive material, as defined in s. 383.61, of a donor  
122 without the recipient's consent.

123 (xx) A violation of s. 383.61.

124 Section 5. Paragraph (yy) and paragraph (zz) are added to  
125 subsection (1) of section 459.015, Florida Statutes, to read:

126 459.015 Grounds for disciplinary action; action by the



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127 board and department.-

128 (1) The following acts constitute grounds for denial of a  
129 license or disciplinary action, as specified in s. 456.072(2):

130 (yy) Intentionally implanting or inseminating a recipient  
131 or causing a recipient to be implanted or inseminated with the  
132 reproductive material, as defined in s. 383.61, of a donor  
133 without the recipient's consent.

134 (zz) A violation of s. 383.61.

135 Section 6. Section 784.086, Florida Statutes, is created to  
136 read:

137 784.086 Reproductive battery.-

138 (1) As used in this section, the term:

139 (a) "Donor" has the same meaning as provided in s. 383.61.

140 (b) "Health care practitioner" has the same meaning as  
141 provided in s. 456.001.

142 (c) "Recipient" has the same meaning as provided in s.  
143 383.61.

144 (d) "Reproductive material" has the same meaning as  
145 provided in s. 383.61.

146 (2) A health care practitioner may not intentionally  
147 penetrate the vagina of a recipient with the reproductive  
148 material of a donor or any object containing the reproductive  
149 material of a donor, knowing the recipient has not consented to  
150 the use of the reproductive material from that donor.

151 (a) A health care practitioner who violates this section  
152 commits reproductive battery, a felony of the third degree,  
153 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

154 (b) A health care practitioner who violates this section  
155 and is the donor of the reproductive material commits a felony



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156 of the second degree, punishable as provided in s. 775.082, s.  
157 775.083, or s. 775.084.

158 (3) Notwithstanding any other provision of law, the period  
159 of limitation for a violation under this section does not begin  
160 to run until the date on which the violation is discovered and  
161 reported to law enforcement or any other governmental agency.

162 (4) It is not a defense to the crime of reproductive  
163 battery that the recipient consented to an anonymous donor.

164 Section 8. This act shall take effect July 1, 2020.

166 ===== T I T L E A M E N D M E N T =====

167 And the title is amended as follows:

168 Delete everything before the enacting clause  
169 and insert:

170 A bill to be entitled

171 An act relating to reproductive health; creating s.  
172 383.61, F.S.; defining terms; requiring a  
173 commissioning party or donor to enter into a contract;  
174 providing requirements for the contract; requiring  
175 donor banks, fertility clinics and health care  
176 practitioners, to develop, by a specified date, a  
177 written best practices policy consistent with 42  
178 U.S.C. 263a(f); requiring the annual submission of  
179 such written policies; requiring labeling of  
180 reproductive material and contract compliance;  
181 requiring records retention; prohibiting a health care  
182 practitioner from implanting or inseminating a  
183 recipient with reproductive material of the health  
184 care practitioner; requiring annual inspections by the



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185 Agency for Health Care Administration; providing that  
186 donor banks and fertility clinics are subject to  
187 penalties for noncompliance; amending s. 456.072;  
188 adding new grounds for discipline; creating s. 456.51,  
189 F.S.; defining the term "pelvic examination";  
190 prohibiting a health care practitioner from performing  
191 a pelvic examination on a patient without first  
192 obtaining the written consent of the patient or the  
193 patient's legal representative; providing exceptions;  
194 amending s. 458.331; adding new grounds for  
195 discipline; amending s. 459.015; adding new grounds  
196 for discipline; creating s. 784.086; creating the  
197 criminal offense of reproductive battery; providing  
198 criminal penalties; tolling the statute of  
199 limitations; providing applicability; providing an  
200 effective date.