

1 A bill to be entitled

2 An act relating to abortion; amending s. 390.0111, F.S.;
3 clarifying the requirement that third trimester abortions
4 be performed in a hospital; providing for disciplinary
5 action for violation of specified provisions; requiring an
6 ultrasound be performed on any woman obtaining an
7 abortion; specifying who must perform an ultrasound;
8 providing that the ultrasound must be reviewed with the
9 patient prior to the woman giving informed consent;
10 specifying who must review the ultrasound with the
11 patient; providing that the woman must certify in writing
12 that she declined to review the ultrasound and did so of
13 her own free will and without undue influence; revising
14 requirements for written materials; providing ban on
15 physicians seeking waivers of patients' rights to file
16 complaints with regulatory bodies or litigate causes of
17 action; requiring a 24-hour waiting period before a
18 physician may perform or induce an abortion on an adult or
19 on certain minor patients; providing for exception in the
20 case of a medical emergency; creating s. 390.01112, F.S.;
21 providing for a women's reproductive bill of rights;
22 requiring abortion clinics and physician abortion
23 providers to adopt a public statement of patients' rights
24 and to treat patients in accordance with that statement;
25 providing for required provisions in the statement to
26 patients; requiring clinics and physician abortion
27 providers to provide the information in their statement
28 orally and in writing to patients or their court-appointed

29 guardians; requiring that the statements be provided to
30 staff members; requiring staff training; providing for
31 disciplinary action for violation of patients' bill of
32 rights; providing for immunity to persons filing
33 complaints or testifying in proceedings unless acting in
34 bad faith; creating s. 390.01113, F.S.; creating a private
35 civil action against clinics, nurses, or physicians or
36 violation of a patients' rights; providing persons who may
37 file a cause of action; providing venue; providing for
38 actual and punitive damages; providing for recovery of
39 attorneys fees; providing criteria for recovering
40 attorney's fees; providing that a cause of action under
41 this section is not a claim for medical malpractice;
42 providing basis for punitive damages and exemptions from
43 other provisions of law governing punitive damages;
44 amending s. 390.01114, F.S.; revising provisions relating
45 to parental notice of abortion; providing exceptions;
46 providing for a cause of action under certain
47 circumstances for parents who do not receive notice;
48 providing for damages for cause of action; requiring
49 appointment of a guardian ad litem for a minor petitioning
50 for a waiver of the notice requirements; specifying
51 factors to be considered in determining whether a minor is
52 sufficiently mature to waive the notice requirements;
53 revising provisions relating to confidentiality of
54 hearings; creating s. 390.01117, F.S.; providing for a
55 cause of action in negligence for any injury or death a
56 patient suffers as a result of an abortion; providing for

57 | who may bring a cause of action; providing for survival
58 | and wrongful death damages if the patient dies; providing
59 | for venue; providing for actual and punitive damages;
60 | providing for attorney's fees to prevailing party under
61 | certain circumstances; providing that remedies are in
62 | addition to any other remedies provided for in law;
63 | providing criteria for award of attorney's fees; providing
64 | burden of proof; providing that a cause of action is not
65 | strict liability; providing for legal duties and standards
66 | of care for clinics, physicians, or nurses; providing that
67 | cause of action under this section is not a medical
68 | malpractice claim; providing for exceptions from certain
69 | laws; providing standard for award of punitive damages;
70 | providing for exceptions from certain laws for punitive
71 | damage awards; creating s. 390.01118, F.S.; providing for
72 | a statute of limitations and repose for specified causes
73 | of action; providing for statute of limitations periods of
74 | actions that accrue prior to the effective date of s.
75 | 390.01118, F.S.; creating s. 390.01119, F.S.; providing
76 | for a misdemeanor of the second degree for fraudulently
77 | altering, defacing, or falsifying medical records related
78 | to an abortion or for causing any of these offenses;
79 | providing for professional licensure actions for the same
80 | violations; amending s. 390.012, F.S.; providing that
81 | agency rules promulgated shall prohibit the performance of
82 | abortions in the third trimester other than in a hospital;
83 | requiring that the agency rules provide that a clinic or
84 | abortion provider cannot request a patient to waive her

85 | rights to sue or file a complaint with a disciplinary
 86 | body; deleting references to conform; requiring
 87 | ultrasounds for all patients; requiring that live
 88 | ultrasound images be reviewed and explained to the
 89 | patient; providing that the patient may decline to review
 90 | ultrasound images; providing that any language of the act
 91 | that could be construed as infringing upon a court's
 92 | powers shall be construed as a request for rule change;
 93 | providing for severability; providing an effective date.

94 |

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

96 |

97 | Section 1. Subsections (1) and (3) of section 390.0111,
 98 | Florida Statutes, are amended, and subsection (12) is added to
 99 | that section, to read:

100 | 390.0111 Termination of pregnancies.--

101 | (1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.--No
 102 | termination of pregnancy shall be performed on any human being
 103 | in the third trimester of pregnancy unless:

104 | (a) The abortion is performed in a hospital; and

105 | (b)1. Two physicians certify in writing to the fact that,
 106 | to a reasonable degree of medical probability, the termination
 107 | of pregnancy is necessary to save the life or preserve the
 108 | health of the pregnant woman; or

109 | 2.~~(b)~~ The physician certifies in writing to the medical
 110 | necessity for legitimate emergency medical procedures for
 111 | termination of pregnancy in the third trimester, and another
 112 | physician is not available for consultation.

113 (c) Violation of this subsection by a physician
 114 constitutes grounds for disciplinary action under s. 458.331 or
 115 s. 459.015.

116 (3) CONSENTS REQUIRED.--A termination of pregnancy may not
 117 be performed or induced except with the voluntary and informed
 118 written consent of the pregnant woman or, in the case of a
 119 mental incompetent, the voluntary and informed written consent
 120 of her court-appointed guardian.

121 (a) Except in the case of a medical emergency, consent to
 122 a termination of pregnancy is voluntary and informed only if:

123 1. The physician who is to perform the procedure, or the
 124 referring physician, has, at a minimum, orally, in person,
 125 informed the woman of:

126 a. The nature and risks of undergoing or not undergoing
 127 the proposed procedure that a reasonable patient would consider
 128 material to making a knowing and willful decision of whether to
 129 terminate a pregnancy.

130 b. The probable gestational age of the fetus, verified by
 131 an ultrasound, at the time the termination of pregnancy is to be
 132 performed.

133 (I) The ultrasound must be performed by the physician who
 134 is to perform the abortion or person having documented evidence
 135 that he or she has completed a course in the operation of
 136 ultrasound equipment as prescribed by rule and who is working in
 137 conjunction with the physician.

138 (II) The person performing the ultrasound must allow the
 139 woman to view the live ultrasound images and a physician, or a
 140 registered nurse, licensed practical nurse, advanced registered

141 nurse practitioner, or physician assistant working in
142 conjunction with the physician, must contemporaneously review
143 and explain the live ultrasound images to the woman prior to the
144 woman giving informed consent to having an abortion procedure
145 performed.

146 (III) The woman has a right to decline to view the
147 ultrasound images after she is informed of her right to view
148 them. If the woman declines to view the ultrasound images, the
149 woman shall complete a form acknowledging that she was offered
150 an opportunity to view her ultrasound but that she rejected that
151 opportunity. The form must also indicate that the woman's
152 decision not to view the ultrasound was not based on any undue
153 influence from any third party to discourage her from viewing
154 the images and that she declined to view the images of her own
155 free will.

156 c. The medical risks to the woman and fetus of carrying
157 the pregnancy to term.

158 2. Printed materials prepared and provided by the
159 department have been provided to the pregnant woman, if she
160 chooses to view these materials, including:

161 a. A description of the fetus, including a description of
162 the various stages of development.

163 b. A list of entities ~~agencies~~ that offer alternatives to
164 terminating the pregnancy.

165 c. Detailed information on the availability of medical
166 assistance benefits for prenatal care, childbirth, and neonatal
167 care.

168 3. The woman acknowledges in writing, before the

169 termination of pregnancy, that the information required to be
170 provided under this subsection has been provided.

171

172 Nothing in this paragraph is intended to prohibit a physician
173 from providing any additional information which the physician
174 deems material to the woman's informed decision to terminate her
175 pregnancy.

176 (b) In the event a medical emergency exists and a
177 physician cannot comply with the requirements for informed
178 consent, a physician may terminate a pregnancy if he or she has
179 obtained at least one corroborative medical opinion attesting to
180 the medical necessity for emergency medical procedures and to
181 the fact that to a reasonable degree of medical certainty the
182 continuation of the pregnancy would threaten the life of the
183 pregnant woman. In the event no second physician is available
184 for a corroborating opinion, the physician may proceed but shall
185 document reasons for the medical necessity in the patient's
186 medical records.

187 (c) A physician shall not request a patient to waive her
188 ability to either file a complaint with any disciplinary body or
189 to litigate a cause of action based on the care received related
190 to an abortion or a violation of her rights.

191 (d) Violation of this subsection by a physician
192 constitutes grounds for disciplinary action under s. 458.331 or
193 s. 459.015. Substantial compliance or reasonable belief that
194 complying with the requirements of informed consent would
195 threaten the life or health of the patient is a defense to any
196 action brought under this paragraph.

197 (12) WAITING PERIOD FOR ABORTION.--No physician shall
 198 perform or induce an abortion on a minor patient where notice is
 199 not required pursuant to s. 390.01114(3) (b) or on an adult
 200 patient unless, at least 24 hours prior thereto, a treating
 201 physician has conferred with the patient, or her court-appointed
 202 guardian if she is mentally incompetent, pursuant to the
 203 requirements set forth in subsection (3). If a medical emergency
 204 as defined in s. 390.01114(2) (d) exists, then this subsection
 205 shall not apply.

206 Section 2. Section 390.01112, Florida Statutes, is created
 207 to read:

208 390.01112 Women's reproductive bill of rights.--

209 (1) All abortion clinics and physician abortion providers
 210 shall adopt and make public a statement of the rights of
 211 patients seeking abortions and shall treat such patients in
 212 accordance with the provisions of that statement. The statement
 213 shall assure each patient all of the following:

214 (a) That her abortion must be performed by a physician as
 215 defined in s. 390.0111.

216 (b) That she has the right to know the name, function, and
 217 qualifications of each health care provider who is providing
 218 medical services to the her. She may request this information
 219 from the clinic or physician abortion provider.

220 (c) That she is entitled to know the probable gestational
 221 age of the fetus at the time the abortion is to be performed.

222 (d) That if she is in her third trimester of pregnancy,
 223 any abortion must be performed at a hospital.

224 (e) That either the patient, or her court appointed

225 guardian if she is mentally incompetent, as set forth in s.
226 390.0111(3) is entitled to provide voluntary and informed,
227 written consent, unless a legal exception to obtaining informed
228 consent exists, before an abortion can be performed or induced.

229 (f) That if she is a minor, her parent or legal guardian
230 as set forth in s. 390.01114(3) is entitled to receive actual or
231 constructive notice, unless a legal exception to compliance with
232 notice requirements exists, before an abortion can be performed
233 or induced.

234 (g) That she is entitled to printed materials containing a
235 description of the fetus, a list of agencies that offer
236 alternatives to terminating the pregnancy, and detailed
237 information on the availability of medical assistance benefits
238 for prenatal care, childbirth, and neonatal care.

239 (h) That she is entitled to be notified of the medical
240 risks of undergoing or not undergoing the proposed procedure
241 that a reasonable patient would consider material to making a
242 knowing and willful decision of whether to terminate the
243 pregnancy.

244 (i) That she is entitled to notification of the medical
245 risks to her and her fetus of carrying the pregnancy to term.

246 (j) That the clinic, physician, or physician's office is
247 not allowed to require her to waive her right to either file a
248 complaint with any disciplinary body or to litigate a cause of
249 action based on the care received related to an abortion or a
250 violation of her rights in order to obtain an abortion.

251 (k) That she is entitled to have all medical records
252 pertaining to her abortion treatment made, protected, and

253 preserved by the physician abortion provider and clinic, and
254 that copies of her medical records shall be made available to
255 her, a representative of her estate, her court appointed
256 guardian if she is mentally incompetent, or her parent or legal
257 guardian pursuant to s. 390.01114(3)(d), or her legal
258 representative upon request.

259 (l) That she is entitled to any and all adequate,
260 necessary, and appropriate health care related to the
261 performance or inducement of an abortion, including any and all
262 adequate, necessary, and appropriate post-abortion recovery and
263 medical care.

264 (m) That, if she is in her second trimester of pregnancy,
265 she is entitled to receive care that meets all the quality and
266 safety standards set forth in this chapter, including all
267 requirements provided for in s. 390.012(3).

268 (n) That she, or her court-appointed guardian if she is
269 mentally incompetent, has the right to refuse medication or
270 treatment and to be informed of the consequences of such
271 decisions. When the medication or treatment is refused, the
272 abortion clinic or physician must notify the patient or her
273 court-appointed guardian of the consequences of such decisions
274 and must document the decision in the patient's medical record.
275 The abortion clinic or physician must continue to provide other
276 services that the patient or her court-appointed guardian agrees
277 to in accordance with the patient's care or treatment needs.

278 (o) That she is entitled to have privacy in her treatment
279 and care, and that, except as provided herein or elsewhere in
280 law, her medical records shall remain confidential pursuant to

281 all applicable state and federal laws.

282 (p) That she has the right to a prompt and reasonable
 283 response to any question she may have regarding her care or
 284 treatment.

285 (q) That she has the right to be treated courteously,
 286 fairly, and with the fullest measure of dignity at all times and
 287 upon all occasions.

288 (2) All clinics and physician abortion providers shall
 289 orally inform patients seeking abortions of their rights as set
 290 forth herein and shall provide a copy of the statement as
 291 provided in subsection (1) to each patient, or her court-
 292 appointed guardian if the patient is mentally incompetent,
 293 before performing an abortion. The statement shall itemize each
 294 of the rights set forth in subsection (1) separately, including
 295 each entitlement in s. 390.012 available to a patient obtaining
 296 a second trimester abortion. The clinic or physician practicing
 297 in a doctor's office shall provide a copy of the patients' bill
 298 of reproductive rights to each staff member of the clinic or
 299 physician's office. Each clinic or physician shall prepare a
 300 written plan and provide appropriate staff training to implement
 301 the provisions of this section. The written statement of rights
 302 must include a statement that a patient may file a complaint
 303 with the agency or department. The statement must be in
 304 boldfaced, 14-point type and shall include the address and
 305 telephone number of the agency or department.

306 (3) Any violation of a patient's rights as set forth in
 307 this section by a clinic shall constitute grounds for action by
 308 the agency under the provisions of ss. 390.012, 408.813,

309 408.814, and 408.815. Any violation of a patient's rights as set
 310 forth in this section by a physician shall constitute grounds
 311 for disciplinary action under s. 458.331 or s. 459.015.

312 (4) Any person who submits or reports a complaint
 313 concerning a suspected violation of the patient's rights or
 314 concerning services or conditions in a clinic or physician's
 315 office or who testifies in any administrative or judicial
 316 proceeding arising from such complaint shall have immunity from
 317 any criminal or civil liability therefor, unless that person has
 318 acted in bad faith or with malicious purpose or if the court
 319 finds that there was a complete absence of a justiciable issue
 320 of either law or fact raised by the losing party.

321 Section 3. Section 390.01113, Florida Statutes, is created
 322 to read:

323 390.01113 Civil action for violations of patients' rights;
 324 relief.--

325 (1) Any patient whose rights as specified in s. 390.01112
 326 are violated has a cause of action against any physician, nurse,
 327 or clinic for violation of her rights. The action may be brought
 328 by the patient, her parent, court-appointed or legal guardian,
 329 or by personal representative of the estate of the patient
 330 regardless of the cause of death to enforce the right.

331 (2) The action may be brought in any court of competent
 332 jurisdiction to enforce such rights and to recover actual
 333 damages, and punitive damages when malicious, wanton, or willful
 334 disregard of the rights of others can be shown. Any plaintiff
 335 who prevails in any such action for any amount is entitled to
 336 recover reasonable attorney's fees, costs of the action, and

337 damages, unless the court finds that the plaintiff has acted in
338 bad faith or with malicious purpose or that there was a complete
339 absence of a justiciable issue of either law or fact. A
340 prevailing defendant is entitled to recover reasonable
341 attorney's fees under s. 57.105. The remedies provided in this
342 section are in addition to other legal and administrative
343 remedies available to a patient, her estate, or to the agency or
344 department.

345 (3) Attorney's fees shall be based on the following
346 criteria:

347 (a) The time and labor required.

348 (b) The novelty and difficulty of the questions.

349 (c) The skill requisite to perform the legal service
350 properly.

351 (d) The preclusions of other employment by the attorney
352 due to the acceptance of the case.

353 (e) The customary fee.

354 (f) Whether the fee is fixed or contingent.

355 (g) The amount involved or the results obtained.

356 (h) The experience, reputation, and ability of the
357 attorneys.

358 (i) The costs expended to prosecute the claim.

359 (j) The type of fee arrangement between the attorney and
360 the client.

361 (k) Whether the relevant market requires a contingency fee
362 multiplier to obtain competent counsel.

363 (l) Whether the attorney was able to mitigate the risk of
364 nonpayment in any way.

365 (4) Any action brought under this section is not a claim
 366 for medical malpractice, and chapter 766 does not apply. The
 367 provisions of s. 768.21(8) do not apply to a claim alleging
 368 death of the patient.

369 (5) For purposes of this section, punitive damages may be
 370 awarded for conduct that is willful, wanton, gross or flagrant,
 371 reckless, or consciously indifferent to the rights of the
 372 patient. Sections 768.72, 768.725, and 768.73 do not apply to
 373 any civil action filed under this section.

374 Section 4. Subsection (3) and paragraphs (a), (c), and (e)
 375 of subsection (4) of section 390.01114, Florida Statutes, are
 376 amended to read:

377 390.01114 Parental Notice of Abortion Act.--

378 (3) NOTIFICATION REQUIRED.--

379 (a)1.a. Actual notice shall be provided by the physician
 380 performing or inducing the termination of pregnancy before the
 381 performance or inducement of the termination of the pregnancy of
 382 a minor. The notice may be given by a referring physician. The
 383 physician who performs or induces the termination of pregnancy
 384 must receive the written statement of the referring physician
 385 certifying that the referring physician has given notice. If
 386 actual notice is provided by telephone, the physician must
 387 actually speak with the parent or guardian and must record in
 388 the minor's medical file the name of the parent or guardian
 389 provided notice, the phone number dialed, and the date and time
 390 of the call.

391 b. If actual notice is not possible after a reasonable
 392 effort has been made, the physician performing or inducing the

393 termination of pregnancy or the referring physician must give
394 constructive notice. If constructive notice is given, the
395 physician must document that notice by placing copies of any
396 document related to the constructive notice, including, but not
397 limited to, a copy of the letter and the return receipt, in the
398 minor's medical file.

399 2. Notice given under this subsection by the physician
400 performing or inducing the termination of pregnancy must include
401 the name and address of the facility providing the termination
402 of pregnancy and the name of the physician providing notice.
403 Notice given under this subsection by a referring physician must
404 include the name and address of the facility where he or she is
405 referring the minor and the name of the physician providing
406 notice. ~~If actual notice is provided by telephone, the physician~~
407 ~~must actually speak with the parent or guardian, and must record~~
408 ~~in the minor's medical file the name of the parent or guardian~~
409 ~~provided notice, the phone number dialed, and the date and time~~
410 ~~of the call. If constructive notice is given, the physician must~~
411 ~~document that notice by placing copies of any document related~~
412 ~~to the constructive notice, including, but not limited to, a~~
413 ~~copy of the letter and the return receipt, in the minor's~~
414 ~~medical file.~~

415 (b) Notice is not required if:

416 1. In the physician's good faith clinical judgment, a
417 medical emergency exists and there is insufficient time for the
418 attending physician to comply with the notification
419 requirements. If a medical emergency exists, the physician may
420 proceed but must document reasons for the medical necessity in

421 the patient's medical records;

422 2. Notice is waived in writing by the person who is
423 entitled to notice;

424 3. Notice is waived by the minor who is or has been
425 married or has had the disability of nonage removed under s.
426 743.015 or a similar statute of another state;

427 4. Notice is waived by the patient because the patient has
428 a minor child dependent on her; or

429 5. Notice is waived under subsection (4).

430 (c) Violation of this subsection by a physician
431 constitutes grounds for disciplinary action under s. 458.331 or
432 s. 459.015.

433 (d) Any parent or legal guardian of a minor upon whom a
434 termination of pregnancy has been performed or induced who does
435 not receive actual or constructive notice from the physician
436 performing or inducing the termination of pregnancy, where an
437 exception to notice pursuant to paragraph (b) does not exist,
438 may, in a civil action, obtain appropriate relief, unless the
439 pregnancy resulted from the parent or legal guardian's criminal
440 conduct.

441 (e) In a civil action under paragraph (d), appropriate
442 relief includes:

443 1. Monetary damages for all injuries, psychological and
444 physical, occasioned by the violation of paragraph(a); and

445 2. Damages equal to three times the cost of the abortion.

446 (f) The damages provided for in paragraph (e) are in
447 addition to any other legal or administrative remedies that may
448 be available to the plaintiff or department.

449 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.--

450 (a) A minor may petition any circuit court in a judicial
 451 circuit within the jurisdiction of the District Court of Appeal
 452 in which she resides for a waiver of the notice requirements of
 453 subsection (3) and may participate in proceedings on her own
 454 behalf. The petition may be filed under a pseudonym or through
 455 the use of initials, as provided by court rule. The petition
 456 must include a statement that the petitioner is pregnant and
 457 notice has not been waived. The court shall advise the minor
 458 that she has a right to court-appointed counsel and shall
 459 provide her with counsel upon her request at no cost to the
 460 minor. The court shall appoint a guardian ad litem for the
 461 minor.

462 (c) If the court finds, by clear and convincing evidence,
 463 that the minor is sufficiently mature to decide whether to
 464 terminate her pregnancy, the court shall issue an order
 465 authorizing the minor to consent to the performance or
 466 inducement of a termination of pregnancy without the
 467 notification of a parent or guardian.

468 1. Factors a court shall consider when determining whether
 469 a child is sufficiently mature include, but are not limited to,
 470 the following:

471 a. Whether the minor is mature enough to make her abortion
 472 decision, as evidenced by:

473 (I) The minor's age.

474 (II) The minor's credibility and demeanor as a witness.

475 (III) The minor's ability to accept responsibility; and

476 b. Whether the minor is well informed enough to make the

477 decision on her own, as evidenced by the minor's:

478 (I) Overall intelligence.

479 (II) Emotional development.

480 (III) Ability to assess both the immediate and long range
 481 consequences of her choices.

482 (IV) Ability to understand and explain the medical
 483 consequences of terminating her pregnancy and to apply that
 484 understanding to her decision.

485 2. The court should also take into consideration whether
 486 there has been any undue influence by another on the minor's
 487 decision to have an abortion.

488

489 If the court does not make the finding specified in this
 490 paragraph or paragraph (d), it must dismiss the petition.

491 (e) A court that conducts proceedings under this section
 492 shall:

493 1. Provide for a written transcript of all testimony and
 494 proceedings.

495 2. Issue a written final order containing all factual
 496 findings and legal conclusions, including factual findings and
 497 legal conclusions as to whether the petitioner is sufficiently
 498 mature based on the factors set forth in subparagraph(c)1.

499 3. Order that a confidential record be maintained as
 500 required under s. 390.01116. All hearings under this section,
 501 including appeals, shall remain confidential and closed to the
 502 public, as provided by court rule ~~A court that conducts~~
 503 ~~proceedings under this section shall provide for a written~~
 504 ~~transcript of all testimony and proceedings and issue written~~

505 ~~and specific factual findings and legal conclusions supporting~~
506 ~~its decision and shall order that a confidential record be~~
507 ~~maintained, as required under s. 390.01116. At the hearing, the~~
508 ~~court shall hear evidence relating to the emotional development,~~
509 ~~maturity, intellect, and understanding of the minor, and all~~
510 ~~other relevant evidence. All hearings under this section,~~
511 ~~including appeals, shall remain confidential and closed to the~~
512 ~~public, as provided by court rule.~~

513 Section 5. Section 390.01117, Florida Statutes, is created
514 to read:

515 390.01117 Civil action for negligence; remedies.--

516 (1) Any patient who suffers injury or death as a result of
517 an abortion shall have a cause of action for negligence. The
518 action may be brought by the patient, her parent, court-
519 appointed or legal guardian, or by a personal representative of
520 the estate of the patient regardless of the cause of death to
521 enforce the right. If the claim involves negligence or injury to
522 the patient that resulted in her death, then the plaintiff shall
523 be entitled to recover both survival damages pursuant to s.
524 46.021 and wrongful death damages pursuant to s. 768.21. If the
525 action alleges a claim for injury to the patient that did not
526 cause her death, the personal representative of the estate may
527 recover damages for negligence that caused injury to the
528 patient.

529 (2) The action may be brought in any court of competent
530 jurisdiction to enforce such rights and to recover actual
531 damages, and punitive damages when malicious, wanton, or willful
532 disregard of the rights of others can be shown. Any plaintiff

533 who prevails in any such action for any amount is entitled to
534 recover reasonable attorney's fees, costs of the action, and
535 damages, unless the court finds that the plaintiff has acted in
536 bad faith or with malicious purpose or that there was a complete
537 absence of a justiciable issue of either law or fact. A
538 prevailing defendant is entitled to recover reasonable
539 attorney's fees pursuant to s. 57.105. The remedies provided in
540 this section are in addition to other legal and administrative
541 remedies available to a patient, her estate, or to the agency or
542 department.

543 (3) Attorney's fees shall be based on the following
544 criteria:

545 (a) The time and labor required.

546 (b) The novelty and difficulty of the questions.

547 (c) The skill requisite to perform the legal service
548 properly.

549 (d) The preclusions of other employment by the attorney
550 due to the acceptance of the case.

551 (e) The customary fee.

552 (f) Whether the fee is fixed or contingent.

553 (g) The amount involved or the results obtained.

554 (h) The experience, reputation, and ability of the
555 attorneys.

556 (i) The costs expended to prosecute the claim.

557 (j) The type of fee arrangement between the attorney and
558 the client.

559 (k) Whether the relevant market requires a contingency fee
560 multiplier to obtain competent counsel.

561 (1) Whether the attorney was able to mitigate the risk of
562 nonpayment in any way.

563 (4) In any claim brought under this section, the plaintiff
564 shall have the burden of proving by a preponderance of the
565 evidence, the following:

566 (a) The defendant owed a duty to the patient.

567 (b) The defendant breached the duty to the patient.

568 (c) The breach of the duty was a legal cause of loss,
569 injury, death, or damage to the patient.

570 (d) The patient sustained loss, injury, death, or damage
571 as a result of the breach.

572 (5) Nothing in this section shall be interpreted to create
573 strict liability. Injury or death resulting to the patient shall
574 be evidence of negligence, but shall not be negligence per se.

575 (6) In any claim brought under this section, a clinic,
576 person, or entity shall have a duty to exercise reasonable care.
577 Reasonable care is that degree of care which a reasonably
578 careful clinic, person, or entity would use under like
579 circumstances.

580 (7) In any claim for negligence by a physician, such
581 physician shall have the duty to exercise care consistent with
582 the prevailing professional standard of care for physicians. The
583 prevailing professional standard of care for physicians shall be
584 that level of care, skill, and treatment which, in light of all
585 relevant surrounding circumstances, is recognized as acceptable
586 and appropriate by reasonably prudent similar physicians.

587 (8) In any claim for negligence by a nurse licensed under
588 part I of chapter 464, such nurse shall have the duty to

589 exercise care consistent with the prevailing professional
590 standard of care for a nurse. The prevailing professional
591 standard of care for a nurse shall be that level of care, skill,
592 and treatment which, in light of all relevant surrounding
593 circumstances, is recognized as acceptable and appropriate by
594 reasonably prudent similar nurses.

595 (9) Any action brought pursuant to this section is not a
596 claim for medical malpractice, and chapter 766 does not apply.
597 The provisions of s. 768.21(8) do not apply to a claim alleging
598 death of the patient.

599 (10) For purposes of this section, punitive damages may be
600 awarded for conduct that is willful, wanton, gross or flagrant,
601 reckless or consciously indifferent to the rights of the
602 patient. Sections 768.72, 768.725, and 768.73 do not apply to
603 any civil action filed pursuant to this section.

604 Section 6. Section 390.01118, Florida Statutes, is created
605 to read:

606 390.01118 Statute of limitations.--Any action for damages
607 brought under ss. 390.01113, 390.01114(3)(d)-(f), and 390.01117
608 shall be commenced within 2 years from the time the incident
609 giving rise to the action occurred or within 2 years from the
610 time the incident is discovered or should have been discovered
611 with the exercise of due diligence.

612 (1) In those actions covered by ss. 390.01113,
613 390.01114(3)(d)-(f), and 390.01117 in which it can be shown that
614 fraudulent concealment or intentional misrepresentation of fact
615 prevented discovery of the injury, the period of limitations is
616 extended forward 2 years from the time the injury is discovered

617 with the exercise of due diligence.

618 (2) In actions where it can be shown that fraudulent
619 concealment or intentional misrepresentation of fact prevented
620 the discovery of the injury, the period of limitations is
621 extended forward 2 years from the time that the injury is
622 discovered with the exercise of due diligence.

623 Section 7. Section 390.01118, Florida Statutes, as created
624 by this act, shall apply to causes of action that have accrued
625 prior to the effective date of that section; however, any such
626 cause of action that would not have been barred under prior law
627 may be brought within the time allowed by prior law or within 2
628 years after the effective date of that section, whichever is
629 earlier, and will be barred thereafter.

630 Section 8. Section 390.01119, Florida Statutes, is created
631 to read:

632 390.01119 Medical records.--

633 (1) Any person who fraudulently alters, defaces, or
634 falsifies any medical record related to an abortion or causes or
635 procures any of these offenses to be committed, commits a
636 misdemeanor of the second degree, punishable as provided in s.
637 775.082 or s. 775.083.

638 (2) A conviction under subsection (1) is also grounds for
639 restriction, suspension, or termination of the license
640 privileges of a professional licensee.

641 Section 9. Subsection (1) and paragraph (d) of subsection
642 (3) of section 390.012, Florida Statutes, are amended to read:

643 390.012 Powers of agency; rules; disposal of fetal
644 remains.--

645 (1) The agency shall have the authority to develop and
646 enforce rules for the health, care, and treatment of persons in
647 abortion clinics and for the safe operation of such clinics.

648 (a) The rules shall be reasonably related to the
649 preservation of maternal health of the clients.

650 (b) The rules shall be in accordance with s. 797.03 and
651 may not impose an unconstitutional burden on a woman's freedom
652 to decide whether to terminate her pregnancy.

653 (c) The rules shall prohibit the performance of abortions
654 in the third trimester other than in a hospital.

655 (d) The rules shall prohibit a clinic from requesting a
656 patient to waive her ability to either file a complaint with any
657 disciplinary body or to litigate a cause of action based on the
658 care received in the clinic or a violation of her rights.

659 (e)~~(e)~~ The rules shall provide for:

660 1. The performance of pregnancy termination procedures
661 only by a licensed physician.

662 2. The making, protection, and preservation of patient
663 records, which shall be treated as medical records under chapter
664 458.

665 (3) For clinics that perform or claim to perform abortions
666 after the first trimester of pregnancy, the agency shall adopt
667 rules pursuant to ss. 120.536(1) and 120.54 to implement the
668 provisions of this chapter, including the following:

669 (d) Rules relating to the medical screening and evaluation
670 of each abortion clinic patient. At a minimum, these rules shall
671 require:

672 1. A medical history including reported allergies to

673 medications, antiseptic solutions, or latex; past surgeries; and
674 an obstetric and gynecological history.

675 2. A physical examination, including a bimanual
676 examination estimating uterine size and palpation of the adnexa.

677 3. The appropriate laboratory tests, including:

678 a. ~~For an abortion in which an ultrasound examination is~~
679 ~~not performed before the abortion procedure,~~ Urine or blood
680 tests for pregnancy performed before the abortion procedure.

681 b. A test for anemia.

682 c. Rh typing, unless reliable written documentation of
683 blood type is available.

684 d. Other tests as indicated from the physical examination.

685 4. An ultrasound evaluation for all patients ~~who elect to~~
686 ~~have an abortion after the first trimester.~~ The rules shall
687 require that if a person who is not a physician performs an
688 ultrasound examination, that person shall have documented
689 evidence that he or she has completed a course in the operation
690 of ultrasound equipment as prescribed in rule. The physician,
691 registered nurse, licensed practical nurse, advanced registered
692 nurse practitioner, or physician assistant shall review and
693 explain, ~~at the request of the patient,~~ the live ultrasound
694 images ~~evaluation results,~~ including an estimate of the probable
695 gestational age of the fetus, with the patient before the
696 abortion procedure is performed, unless the patient declines
697 pursuant to s. 390.0111.

698 5. That the physician is responsible for estimating the
699 gestational age of the fetus based on the ultrasound examination
700 and obstetric standards in keeping with established standards of

701 care regarding the estimation of fetal age as defined in rule
702 and shall write the estimate in the patient's medical history.
703 The physician shall keep original prints of each ultrasound
704 examination of a patient in the patient's medical history file.

705 Section 10. It is the intent of this act and the
706 Legislature to accord the utmost comity and respect to the
707 constitutional prerogatives of Florida's judiciary, and nothing
708 in this act should be construed as any effort to impinge upon
709 those prerogatives. To that end, should any court of competent
710 jurisdiction enter a final judgment concluding or declaring that
711 any provision of this act improperly encroaches upon the
712 authority of the Florida Supreme Court to determine the rules of
713 practice and procedure in Florida courts, the Legislature hereby
714 declares its intent that any such provision be construed as a
715 request for rule change pursuant to s. 2, Art. V of the State
716 Constitution and not as a mandatory legislative directive.

717 Section 11. If any provision of this act or the
718 application thereof to any person or circumstance is held
719 invalid, the invalidity does not affect other provisions or
720 applications of the act which can be given effect without the
721 invalid provision or application, and to this end the provisions
722 of this act are declared severable.

723 Section 12. This act shall take effect July 1, 2007.