

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; providing
14 an exemption to view the ultrasound for women who are the
15 victims of rape, incest, domestic violence, or human
16 trafficking or for women who have a serious medical
17 condition necessitating the abortion; revising
18 requirements for written materials; providing ban on
19 physicians seeking waivers of patients' rights to file
20 complaints with regulatory bodies or litigate causes of
21 action; requiring a 24-hour waiting period before a
22 physician may perform or induce an abortion on an adult or
23 on certain minor patients; providing for exception in the
24 case of a medical emergency; creating s. 390.01112, F.S.;
25 providing for a women's reproductive bill of rights;
26 requiring abortion clinics and physician abortion
27 providers to adopt a public statement of patients' rights
28 and to treat patients in accordance with that statement;

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

57 requirements; revising provisions relating to
58 confidentiality of hearings; creating s. 390.01117, F.S.;
59 providing for a cause of action in negligence for any
60 injury or death a patient suffers as a result of an
61 abortion; providing for who may bring a cause of action;
62 providing for survival and wrongful death damages if the
63 patient dies; providing for venue; providing for actual
64 and punitive damages; providing for attorney's fees to
65 prevailing party under certain circumstances; providing
66 that remedies are in addition to any other remedies
67 provided for in law; providing criteria for award of
68 attorney's fees; providing burden of proof; providing that
69 a cause of action is not strict liability; providing for
70 legal duties and standards of care for clinics,
71 physicians, or nurses; providing that cause of action
72 under this section is not a medical malpractice claim;
73 providing for exceptions from certain laws; providing
74 standard for award of punitive damages; providing for
75 exceptions from certain laws for punitive damage awards;
76 creating s. 390.01118, F.S.; providing for a statute of
77 limitations and repose for specified causes of action;
78 providing for statute of limitations periods of actions
79 that accrue prior to the effective date of s. 390.01118,
80 F.S.; creating s. 390.01119, F.S.; providing for a
81 misdemeanor of the second degree for fraudulently
82 altering, defacing, or falsifying medical records related
83 to an abortion or for causing any of these offenses;
84 providing for professional licensure actions for the same

85 | violations; amending s. 390.012, F.S.; providing that
 86 | agency rules promulgated shall prohibit the performance of
 87 | abortions in the third trimester other than in a hospital;
 88 | requiring that the agency rules provide that a clinic or
 89 | abortion provider cannot request a patient to waive her
 90 | rights to sue or file a complaint with a disciplinary
 91 | body; deleting references to conform; requiring
 92 | ultrasounds for all patients; requiring that live
 93 | ultrasound images be reviewed and explained to the
 94 | patient; providing that the patient may decline to review
 95 | ultrasound images; providing that any language of the act
 96 | that could be construed as infringing upon a court's
 97 | powers shall be construed as a request for rule change;
 98 | providing for severability; providing an effective date.

99

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

101

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

105 | 390.0111 Termination of pregnancies.--

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

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

110 | (b)1. Two physicians certify in writing to the fact that,
 111 | to a reasonable degree of medical probability, the termination
 112 | of pregnancy is necessary to save the life or preserve the

113 health of the pregnant woman; or

114 ~~2.(b)~~ The physician certifies in writing to the medical
115 necessity for legitimate emergency medical procedures for
116 termination of pregnancy in the third trimester, and another
117 physician is not available for consultation.

118 (c) Violation of this subsection by a physician
119 constitutes grounds for disciplinary action under s. 458.331 or
120 s. 459.015.

121 (3) CONSENTS REQUIRED.--A termination of pregnancy may not
122 be performed or induced except with the voluntary and informed
123 written consent of the pregnant woman or, in the case of a
124 mental incompetent, the voluntary and informed written consent
125 of her court-appointed guardian.

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

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

131 a. The nature and risks of undergoing or not undergoing
132 the proposed procedure that a reasonable patient would consider
133 material to making a knowing and willful decision of whether to
134 terminate a pregnancy.

135 b. The probable gestational age of the fetus, verified by
136 an ultrasound, at the time the termination of pregnancy is to be
137 performed.

138 (I) The ultrasound must be performed by the physician who
139 is to perform the abortion or person having documented evidence
140 that he or she has completed a course in the operation of

141 ultrasound equipment as prescribed by rule and who is working in
142 conjunction with the physician.

143 (II) The person performing the ultrasound must allow the
144 woman to view the live ultrasound images and a physician, or a
145 registered nurse, licensed practical nurse, advanced registered
146 nurse practitioner, or physician assistant working in
147 conjunction with the physician, must contemporaneously review
148 and explain the live ultrasound images to the woman prior to the
149 woman giving informed consent to having an abortion procedure
150 performed. However, this sub-sub-subparagraph does not apply if,
151 at the time the woman schedules or arrives for her appointment
152 to obtain an abortion, a copy of a restraining order, police
153 report, medical record, or other court order or documentation is
154 presented that evidences that the woman is obtaining the
155 abortion because the woman is a victim of rape, incest, domestic
156 violence, or human trafficking or that the woman has been
157 diagnosed with a condition that, on the basis of a physician's
158 good faith clinical judgment, would create a serious risk of
159 substantial and irreversible impairment of a major bodily
160 function if the woman delayed terminating her pregnancy.

161 (III) The woman has a right to decline to view the
162 ultrasound images after she is informed of her right to view
163 them. If the woman declines to view the ultrasound images, the
164 woman shall complete a form acknowledging that she was offered
165 an opportunity to view her ultrasound but that she rejected that
166 opportunity. The form must also indicate that the woman's
167 decision not to view the ultrasound was not based on any undue
168 influence from any third party to discourage her from viewing

169 | the images and that she declined to view the images of her own
 170 | free will.

171 | c. The medical risks to the woman and fetus of carrying
 172 | the pregnancy to term.

173 | 2. Printed materials prepared and provided by the
 174 | department have been provided to the pregnant woman, if she
 175 | chooses to view these materials, including:

176 | a. A description of the fetus, including a description of
 177 | the various stages of development.

178 | b. A list of entities ~~agencies~~ that offer alternatives to
 179 | terminating the pregnancy.

180 | c. Detailed information on the availability of medical
 181 | assistance benefits for prenatal care, childbirth, and neonatal
 182 | care.

183 | 3. The woman acknowledges in writing, before the
 184 | termination of pregnancy, that the information required to be
 185 | provided under this subsection has been provided.

186 |
 187 | Nothing in this paragraph is intended to prohibit a physician
 188 | from providing any additional information which the physician
 189 | deems material to the woman's informed decision to terminate her
 190 | pregnancy.

191 | (b) In the event a medical emergency exists and a
 192 | physician cannot comply with the requirements for informed
 193 | consent, a physician may terminate a pregnancy if he or she has
 194 | obtained at least one corroborative medical opinion attesting to
 195 | the medical necessity for emergency medical procedures and to
 196 | the fact that to a reasonable degree of medical certainty the

197 continuation of the pregnancy would threaten the life of the
 198 pregnant woman. In the event no second physician is available
 199 for a corroborating opinion, the physician may proceed but shall
 200 document reasons for the medical necessity in the patient's
 201 medical records.

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

206 (d) Violation of this subsection by a physician
 207 constitutes grounds for disciplinary action under s. 458.331 or
 208 s. 459.015. Substantial compliance or reasonable belief that
 209 complying with the requirements of informed consent would
 210 threaten the life or health of the patient is a defense to any
 211 action brought under this paragraph.

212 (12) WAITING PERIOD FOR ABORTION.--No physician shall
 213 perform or induce an abortion on a minor patient where notice is
 214 not required pursuant to s. 390.01114(3)(b) or on an adult
 215 patient unless, at least 24 hours prior thereto, a treating
 216 physician has conferred with the patient, or her court-appointed
 217 guardian if she is mentally incompetent, pursuant to the
 218 requirements set forth in subsection (3). If a medical emergency
 219 as defined in s. 390.01114(2)(d) exists, then this subsection
 220 shall not apply.

221 Section 2. Section 390.01112, Florida Statutes, is created
 222 to read:

223 390.01112 Women's reproductive bill of rights.--

224 (1) All abortion clinics and physician abortion providers

225 shall adopt and make public a statement of the rights of
226 patients seeking abortions and shall treat such patients in
227 accordance with the provisions of that statement. The statement
228 shall assure each patient all of the following:

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

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

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

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

239 (e) That either the patient, or her court appointed
240 guardian if she is mentally incompetent, as set forth in s.
241 390.0111(3) is entitled to provide voluntary and informed,
242 written consent, unless a legal exception to obtaining informed
243 consent exists, before an abortion can be performed or induced.

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

249 (g) That she is entitled to printed materials containing a
250 description of the fetus, a list of agencies that offer
251 alternatives to terminating the pregnancy, and detailed
252 information on the availability of medical assistance benefits

253 for prenatal care, childbirth, and neonatal care.

254 (h) That she is entitled to be notified of the medical
255 risks of undergoing or not undergoing the proposed procedure
256 that a reasonable patient would consider material to making a
257 knowing and willful decision of whether to terminate the
258 pregnancy.

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

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

266 (k) That she is entitled to have all medical records
267 pertaining to her abortion treatment made, protected, and
268 preserved by the physician abortion provider and clinic, and
269 that copies of her medical records shall be made available to
270 her, a representative of her estate, her court appointed
271 guardian if she is mentally incompetent, or her parent or legal
272 guardian pursuant to s. 390.01114(3)(d), or her legal
273 representative upon request.

274 (l) That she is entitled to any and all adequate,
275 necessary, and appropriate health care related to the
276 performance or inducement of an abortion, including any and all
277 adequate, necessary, and appropriate post-abortion recovery and
278 medical care.

279 (m) That, if she is in her second trimester of pregnancy,
280 she is entitled to receive care that meets all the quality and

281 safety standards set forth in this chapter, including all
282 requirements provided for in s. 390.012(3).

283 (n) That she, or her court-appointed guardian if she is
284 mentally incompetent, has the right to refuse medication or
285 treatment and to be informed of the consequences of such
286 decisions. When the medication or treatment is refused, the
287 abortion clinic or physician must notify the patient or her
288 court-appointed guardian of the consequences of such decisions
289 and must document the decision in the patient's medical record.
290 The abortion clinic or physician must continue to provide other
291 services that the patient or her court-appointed guardian agrees
292 to in accordance with the patient's care or treatment needs.

293 (o) That she is entitled to have privacy in her treatment
294 and care, and that, except as provided herein or elsewhere in
295 law, her medical records shall remain confidential pursuant to
296 all applicable state and federal laws.

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

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

303 (2) All clinics and physician abortion providers shall
304 orally inform patients seeking abortions of their rights as set
305 forth herein and shall provide a copy of the statement as
306 provided in subsection (1) to each patient, or her court-
307 appointed guardian if the patient is mentally incompetent,
308 before performing an abortion. The statement shall itemize each

309 of the rights set forth in subsection (1) separately, including
310 each entitlement in s. 390.012 available to a patient obtaining
311 a second trimester abortion. The clinic or physician practicing
312 in a doctor's office shall provide a copy of the patients' bill
313 of reproductive rights to each staff member of the clinic or
314 physician's office. Each clinic or physician shall prepare a
315 written plan and provide appropriate staff training to implement
316 the provisions of this section. The written statement of rights
317 must include a statement that a patient may file a complaint
318 with the agency or department. The statement must be in
319 boldfaced, 14-point type and shall include the address and
320 telephone number of the agency or department.

321 (3) Any violation of a patient's rights as set forth in
322 this section by a clinic shall constitute grounds for action by
323 the agency under the provisions of ss. 390.012, 408.813,
324 408.814, and 408.815. Any violation of a patient's rights as set
325 forth in this section by a physician shall constitute grounds
326 for disciplinary action under s. 458.331 or s. 459.015.

327 (4) Any person who submits or reports a complaint
328 concerning a suspected violation of the patient's rights or
329 concerning services or conditions in a clinic or physician's
330 office or who testifies in any administrative or judicial
331 proceeding arising from such complaint shall have immunity from
332 any criminal or civil liability therefor, unless that person has
333 committed perjury in his or her testimony or acted in bad faith
334 or with malicious purpose or if the court finds that there was a
335 complete absence of a justiciable issue of either law or fact
336 raised by the losing party.

337 Section 3. Section 390.01113, Florida Statutes, is created
338 to read:

339 390.01113 Civil action for violations of patients' rights;
340 relief.--

341 (1) Any patient whose rights as specified in s. 390.01112
342 are violated has a cause of action against any physician, nurse,
343 or clinic for violation of her rights. The action may be brought
344 by the patient, her parent or legal guardian if the patient is a
345 minor, her court-appointed guardian if the patient is mentally
346 incompetent, or a personal representative of the estate of the
347 patient to enforce the right.

348 (2) The action may be brought in any court of competent
349 jurisdiction to enforce such rights and to recover actual
350 damages, and punitive damages when malicious, wanton, or willful
351 disregard of the rights of others can be shown. Any plaintiff
352 who prevails in any such action for any amount is entitled to
353 recover reasonable attorney's fees, costs of the action, and
354 damages, unless the court finds that the plaintiff has acted in
355 bad faith or with malicious purpose or that there was a complete
356 absence of a justiciable issue of either law or fact. A
357 prevailing defendant is entitled to recover reasonable
358 attorney's fees under s. 57.105 only if the court determines
359 that the plaintiff's claim involved a complete absence of
360 justiciable law or fact. The remedies provided in this section
361 are in addition to other legal and administrative remedies
362 available to a patient, her estate, or to the agency or
363 department.

364 (3) Attorney's fees shall be based on the following

365 criteria:

366 (a) The time and labor required.

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

368 (c) The skill requisite to perform the legal service
369 properly.

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

372 (e) The customary fee.

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

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

375 (h) The experience, reputation, and ability of the
376 attorneys.

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

378 (j) The type of fee arrangement between the attorney and
379 the client.

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

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

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

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

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

396 390.01114 Parental Notice of Abortion Act.--

397 (3) NOTIFICATION REQUIRED.--

398 (a)1.a. Actual notice shall be provided by the physician
399 performing or inducing the termination of pregnancy before the
400 performance or inducement of the termination of the pregnancy of
401 a minor. The notice may be given by a referring physician. The
402 physician who performs or induces the termination of pregnancy
403 must receive the written statement of the referring physician
404 certifying that the referring physician has given notice. If
405 actual notice is provided by telephone, the physician must
406 actually speak with the parent or guardian and must record in
407 the minor's medical file the name of the parent or guardian
408 provided notice, the phone number dialed, and the date and time
409 of the call.

410 b. If actual notice is not possible after a reasonable
411 effort has been made, the physician performing or inducing the
412 termination of pregnancy or the referring physician must give
413 constructive notice. If constructive notice is given, the
414 physician must document that notice by placing copies of any
415 document related to the constructive notice, including, but not
416 limited to, a copy of the letter and the return receipt, in the
417 minor's medical file.

418 2. Notice given under this subsection by the physician
419 performing or inducing the termination of pregnancy must include
420 the name and address of the facility providing the termination

421 of pregnancy and the name of the physician providing notice.
422 Notice given under this subsection by a referring physician must
423 include the name and address of the facility where he or she is
424 referring the minor and the name of the physician providing
425 notice. ~~If actual notice is provided by telephone, the physician~~
426 ~~must actually speak with the parent or guardian, and must record~~
427 ~~in the minor's medical file the name of the parent or guardian~~
428 ~~provided notice, the phone number dialed, and the date and time~~
429 ~~of the call. If constructive notice is given, the physician must~~
430 ~~document that notice by placing copies of any document related~~
431 ~~to the constructive notice, including, but not limited to, a~~
432 ~~copy of the letter and the return receipt, in the minor's~~
433 ~~medical file.~~

434 (b) Notice is not required if:

435 1. In the physician's good faith clinical judgment, a
436 medical emergency exists and there is insufficient time for the
437 attending physician to comply with the notification
438 requirements. If a medical emergency exists, the physician may
439 proceed but must document reasons for the medical necessity in
440 the patient's medical records;

441 2. Notice is waived in writing by the person who is
442 entitled to notice;

443 3. Notice is waived by the minor who is or has been
444 married or has had the disability of nonage removed under s.
445 743.015 or a similar statute of another state;

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

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

449 (c) Violation of this subsection by a physician
450 constitutes grounds for disciplinary action under s. 458.331 or
451 s. 459.015.

452 (d) Any parent or legal guardian of a minor upon whom a
453 termination of pregnancy has been performed or induced who does
454 not receive actual or constructive notice from the physician
455 performing or inducing the termination of pregnancy, where an
456 exception to notice pursuant to paragraph (b) does not exist,
457 may, in a civil action, obtain appropriate relief, unless the
458 pregnancy resulted from the parent or legal guardian's criminal
459 conduct.

460 (e) In a civil action under paragraph (d), appropriate
461 relief includes:

- 462 1. Monetary damages for all injuries, psychological and
463 physical, occasioned by the violation of paragraph(a); and
464 2. Damages equal to three times the cost of the abortion.

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

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

469 (a) A minor may petition any circuit court in a judicial
470 circuit within the jurisdiction of the District Court of Appeal
471 in which she resides for a waiver of the notice requirements of
472 subsection (3) and may participate in proceedings on her own
473 behalf. The petition may be filed under a pseudonym or through
474 the use of initials, as provided by court rule. The petition
475 must include a statement that the petitioner is pregnant and
476 notice has not been waived. The court shall advise the minor

477 that she has a right to court-appointed counsel and shall
478 provide her with counsel upon her request at no cost to the
479 minor. The court shall appoint a guardian ad litem for the
480 minor.

481 (c) If the court finds, by clear and convincing evidence,
482 that the minor is sufficiently mature to decide whether to
483 terminate her pregnancy, the court shall issue an order
484 authorizing the minor to consent to the performance or
485 inducement of a termination of pregnancy without the
486 notification of a parent or guardian.

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

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

492 (I) The minor's age.

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

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

495 b. Whether the minor is well informed enough to make the
496 decision on her own, as evidenced by the minor's:

497 (I) Overall intelligence.

498 (II) Emotional development.

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

501 (IV) Ability to understand and explain the medical
502 consequences of terminating her pregnancy and to apply that
503 understanding to her decision.

504 2. The court should also take into consideration whether

505 there has been any undue influence by another on the minor's
506 decision to have an abortion.

507

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

510 (e) A court that conducts proceedings under this section
511 shall:

512 1. Provide for a written transcript of all testimony and
513 proceedings.

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

518 3. Order that a confidential record be maintained as
519 required under s. 390.01116. All hearings under this section,
520 including appeals, shall remain confidential and closed to the
521 public, as provided by court rule ~~A court that conducts~~
522 ~~proceedings under this section shall provide for a written~~
523 ~~transcript of all testimony and proceedings and issue written~~
524 ~~and specific factual findings and legal conclusions supporting~~
525 ~~its decision and shall order that a confidential record be~~
526 ~~maintained, as required under s. 390.01116. At the hearing, the~~
527 ~~court shall hear evidence relating to the emotional development,~~
528 ~~maturity, intellect, and understanding of the minor, and all~~
529 ~~other relevant evidence. All hearings under this section,~~
530 ~~including appeals, shall remain confidential and closed to the~~
531 ~~public, as provided by court rule.~~

532 Section 5. Section 390.01117, Florida Statutes, is created

533 to read:

534 390.01117 Civil action for negligence; remedies.--

535 (1) Any patient who suffers injury or death as a result of
536 an abortion shall have a cause of action for negligence. The
537 action may be brought by the patient, her parent or legal
538 guardian if the patient is a minor, her court-appointed guardian
539 if the patient is mentally incompetent, or a personal
540 representative of the estate of the patient regardless of the
541 cause of death to enforce the right. If the claim involves
542 negligence or injury to the patient that resulted in her death,
543 then the plaintiff shall be entitled to recover both survival
544 damages pursuant to s. 46.021 and wrongful death damages
545 pursuant to s. 768.21. If the action alleges a claim for injury
546 to the patient that did not cause her death, the personal
547 representative of the estate may recover damages for negligence
548 that caused injury to the patient.

549 (2) The action may be brought in any court of competent
550 jurisdiction to enforce such rights and to recover actual
551 damages, and punitive damages when malicious, wanton, or willful
552 disregard of the rights of others can be shown. Any plaintiff
553 who prevails in any such action for any amount is entitled to
554 recover reasonable attorney's fees, costs of the action, and
555 damages, unless the court finds that the plaintiff has acted in
556 bad faith or with malicious purpose or that there was a complete
557 absence of a justiciable issue of either law or fact. A
558 prevailing defendant is entitled to recover reasonable
559 attorney's fees under s. 57.105 only if the court determines
560 that the plaintiff's claim involved a complete absence of

561 justiciable law or fact. The remedies provided in this section
562 are in addition to other legal and administrative remedies
563 available to a patient, her estate, or to the agency or
564 department.

565 (3) Attorney's fees shall be based on the following
566 criteria:

567 (a) The time and labor required.

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

569 (c) The skill requisite to perform the legal service
570 properly.

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

573 (e) The customary fee.

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

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

576 (h) The experience, reputation, and ability of the
577 attorneys.

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

579 (j) The type of fee arrangement between the attorney and
580 the client.

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

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

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

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

589 (b) The defendant breached the duty to the patient.
 590 (c) The breach of the duty was a legal cause of loss,
 591 injury, death, or damage to the patient.
 592 (d) The patient sustained loss, injury, death, or damage
 593 as a result of the breach.
 594 (5) Nothing in this section shall be interpreted to create
 595 strict liability. Injury or death resulting to the patient shall
 596 be evidence of negligence, but shall not be negligence per se.
 597 (6) In any claim brought under this section, a clinic,
 598 person, or entity shall have a duty to exercise reasonable care.
 599 Reasonable care is that degree of care which a reasonably
 600 careful clinic, person, or entity would use under like
 601 circumstances.
 602 (7) In any claim for negligence by a physician, such
 603 physician shall have the duty to exercise care consistent with
 604 the prevailing professional standard of care for physicians. The
 605 prevailing professional standard of care for physicians shall be
 606 that level of care, skill, and treatment which, in light of all
 607 relevant surrounding circumstances, is recognized as acceptable
 608 and appropriate by reasonably prudent similar physicians.
 609 (8) In any claim for negligence by a nurse licensed under
 610 part I of chapter 464, such nurse shall have the duty to
 611 exercise care consistent with the prevailing professional
 612 standard of care for a nurse. The prevailing professional
 613 standard of care for a nurse shall be that level of care, skill,
 614 and treatment which, in light of all relevant surrounding
 615 circumstances, is recognized as acceptable and appropriate by
 616 reasonably prudent similar nurses.

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

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

626 Section 6. Section 390.01118, Florida Statutes, is created
627 to read:

628 390.01118 Statute of limitations.--Any action for damages
629 brought under ss. 390.01113, 390.01114(3)(d)-(f), and 390.01117
630 shall be commenced within 2 years from the time the incident
631 giving rise to the action occurred or within 2 years from the
632 time the incident is discovered or should have been discovered
633 with the exercise of due diligence. In those actions covered by
634 ss. 390.01113, 390.01114(3)(d)-(f), and 390.01117 in which it
635 can be shown that fraudulent concealment or intentional
636 misrepresentation of fact prevented discovery of the injury, the
637 period of limitations is extended forward 2 years from the time
638 the injury is discovered with the exercise of due diligence.

639 Section 7. Section 390.01118, Florida Statutes, as created
640 by this act, shall apply to causes of action that have accrued
641 prior to the effective date of that section; however, any such
642 cause of action that would not have been barred under prior law
643 may be brought within the time allowed by prior law or within 2
644 years after the effective date of that section, whichever is

645 earlier, and will be barred thereafter.

646 Section 8. Section 390.01119, Florida Statutes, is created
647 to read:

648 390.01119 Medical records.--

649 (1) Any person who fraudulently alters, defaces, or
650 falsifies any medical record related to an abortion or causes or
651 procures any of these offenses to be committed, commits a
652 misdemeanor of the second degree, punishable as provided in s.
653 775.082 or s. 775.083.

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

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

659 390.012 Powers of agency; rules; disposal of fetal
660 remains.--

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

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

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

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

671 (d) The rules shall prohibit a clinic from requesting a
672 patient to waive her ability to either file a complaint with any

673 disciplinary body or to litigate a cause of action based on the
 674 care received in the clinic or a violation of her rights.

675 (e)-(e) The rules shall provide for:

676 1. The performance of pregnancy termination procedures
 677 only by a licensed physician.

678 2. The making, protection, and preservation of patient
 679 records, which shall be treated as medical records under chapter
 680 458.

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

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

688 1. A medical history including reported allergies to
 689 medications, antiseptic solutions, or latex; past surgeries; and
 690 an obstetric and gynecological history.

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

693 3. The appropriate laboratory tests, including:

694 a. ~~For an abortion in which an ultrasound examination is~~
 695 ~~not performed before the abortion procedure,~~ Urine or blood
 696 tests for pregnancy performed before the abortion procedure.

697 b. A test for anemia.

698 c. Rh typing, unless reliable written documentation of
 699 blood type is available.

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

701 4. An ultrasound evaluation for all patients ~~who elect to~~
 702 ~~have an abortion after the first trimester.~~ The rules shall
 703 require that if a person who is not a physician performs an
 704 ultrasound examination, that person shall have documented
 705 evidence that he or she has completed a course in the operation
 706 of ultrasound equipment as prescribed in rule. The physician,
 707 registered nurse, licensed practical nurse, advanced registered
 708 nurse practitioner, or physician assistant shall review and
 709 explain, ~~at the request of the patient,~~ the live ultrasound
 710 images ~~evaluation results,~~ including an estimate of the probable
 711 gestational age of the fetus, with the patient before the
 712 abortion procedure is performed, unless the patient declines
 713 pursuant to s. 390.0111.

714 5. That the physician is responsible for estimating the
 715 gestational age of the fetus based on the ultrasound examination
 716 and obstetric standards in keeping with established standards of
 717 care regarding the estimation of fetal age as defined in rule
 718 and shall write the estimate in the patient's medical history.
 719 The physician shall keep original prints of each ultrasound
 720 examination of a patient in the patient's medical history file.

721 Section 10. It is the intent of this act and the
 722 Legislature to accord the utmost comity and respect to the
 723 constitutional prerogatives of Florida's judiciary, and nothing
 724 in this act should be construed as any effort to impinge upon
 725 those prerogatives. To that end, should any court of competent
 726 jurisdiction enter a final judgment concluding or declaring that
 727 any provision of this act improperly encroaches upon the
 728 authority of the Florida Supreme Court to determine the rules of

729 practice and procedure in Florida courts, the Legislature hereby
730 declares its intent that any such provision be construed as a
731 request for rule change pursuant to s. 2, Art. V of the State
732 Constitution and not as a mandatory legislative directive.

733 Section 11. If any provision of this act or the
734 application thereof to any person or circumstance is held
735 invalid, the invalidity does not affect other provisions or
736 applications of the act which can be given effect without the
737 invalid provision or application, and to this end the provisions
738 of this act are declared severable.

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