

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; specifying that the health
5 exception to restrictions on performing third trimester
6 abortions relates to physical health; providing for
7 disciplinary action for violation of specified provisions;
8 requiring an ultrasound be performed on any woman
9 obtaining an abortion; specifying who must perform an
10 ultrasound; providing that the ultrasound must be reviewed
11 with the patient prior to the woman giving informed
12 consent; specifying who must review the ultrasound with
13 the patient; providing that the woman must certify in
14 writing that she declined to review the ultrasound and did
15 so of her own free will and without undue influence;
16 providing an exemption to view the ultrasound for women
17 who are the victims of rape, incest, domestic violence, or
18 human trafficking or for women who have a serious medical
19 condition necessitating the abortion; revising
20 requirements for written materials; providing ban on
21 physicians seeking waivers of patients' rights to file
22 complaints with regulatory bodies or litigate causes of
23 action; requiring a 24-hour waiting period before a
24 physician may perform or induce an abortion on any
25 patient; providing for exception in the case of a medical
26 emergency; creating s. 390.01112, F.S.; providing for a
27 women's reproductive bill of rights; requiring abortion
28 clinics and physician abortion providers to adopt a public

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

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

85 records related to an abortion or for causing any of these
 86 offenses; providing criminal penalties; providing for
 87 professional licensure actions for the same violations;
 88 amending s. 390.012, F.S.; providing that agency rules
 89 promulgated shall prohibit the performance of abortions in
 90 the third trimester other than in a hospital; requiring
 91 that the agency rules provide that a clinic or abortion
 92 provider cannot request or require a patient to waive her
 93 rights to sue or file a complaint with a disciplinary
 94 body; deleting references to conform; requiring
 95 ultrasounds for all patients; requiring that live
 96 ultrasound images be reviewed and explained to the
 97 patient; requiring that all other provisions in s.
 98 390.0111, F.S., must be complied with should the patient
 99 decline to view her live ultrasound images; providing that
 100 the patient may decline to review ultrasound images;
 101 providing that any language of the act that could be
 102 construed as infringing upon a court's powers shall be
 103 construed as a request for rule change; providing for
 104 severability; providing an effective date.

105
 106 Be It Enacted by the Legislature of the State of Florida:

107
 108 Section 1. Subsections (1) and (3) of section 390.0111,
 109 Florida Statutes, are amended, and subsection (12) is added to
 110 that section, to read:

111 390.0111 Termination of pregnancies.--

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

115 (a) The abortion is performed in a hospital; and

116 (b)1. Two physicians certify in writing to the fact that,
 117 to a reasonable degree of medical probability, the termination
 118 of pregnancy is necessary to save the life or preserve the
 119 physical health of the pregnant woman; or

120 2.~~(b)~~ The physician certifies in writing to the medical
 121 necessity for legitimate emergency medical procedures for
 122 termination of pregnancy in the third trimester, and another
 123 physician is not available for consultation.

124 (c) Violation of this subsection by a physician
 125 constitutes grounds for disciplinary action under s. 458.331 or
 126 s. 459.015.

127 (3) CONSENTS REQUIRED.--A termination of pregnancy may not
 128 be performed or induced except with the voluntary and informed
 129 written consent of the pregnant woman or, in the case of a
 130 mental incompetent, the voluntary and informed written consent
 131 of her court-appointed guardian.

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

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

137 a. The nature and risks of undergoing or not undergoing
 138 the proposed procedure that a reasonable patient would consider

139 material to making a knowing and willful decision of whether to
140 terminate a pregnancy.

141 b. The probable gestational age of the fetus, verified by
142 an ultrasound, at the time the termination of pregnancy is to be
143 performed.

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

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

167 (III) The woman has a right to decline to view the
 168 ultrasound images after she is informed of her right and offered
 169 an opportunity to view them. If the woman declines to view the
 170 ultrasound images, the woman shall complete a form acknowledging
 171 that she was offered an opportunity to view her ultrasound but
 172 that she rejected that opportunity. The form must also indicate
 173 that the woman's decision not to view the ultrasound was not
 174 based on any undue influence from any third party to discourage
 175 her from viewing the images and that she declined to view the
 176 images of her own free will.

177 c. The medical risks to the woman and fetus of carrying
 178 the pregnancy to term.

179 2. Printed materials prepared and provided by the
 180 department have been provided to the pregnant woman, if she
 181 chooses to view these materials, including:

182 a. A description of the fetus, including a description of
 183 the various stages of development.

184 b. A list of entities ~~agencies~~ that offer alternatives to
 185 terminating the pregnancy.

186 c. Detailed information on the availability of medical
 187 assistance benefits for prenatal care, childbirth, and neonatal
 188 care.

189 3. The woman acknowledges in writing, before the
 190 termination of pregnancy, that the information required to be
 191 provided under this subsection has been provided.

192
 193 Nothing in this paragraph is intended to prohibit a physician
 194 from providing any additional information which the physician

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195 | deems material to the woman's informed decision to terminate her
196 | pregnancy.

197 | (b) In the event a medical emergency exists and a
198 | physician cannot comply with the requirements for informed
199 | consent, a physician may terminate a pregnancy if he or she has
200 | obtained at least one corroborative medical opinion attesting to
201 | the medical necessity for emergency medical procedures and to
202 | the fact that to a reasonable degree of medical certainty the
203 | continuation of the pregnancy would threaten the life of the
204 | pregnant woman. In the event no second physician is available
205 | for a corroborating opinion, the physician may proceed but shall
206 | document reasons for the medical necessity in the patient's
207 | medical records.

208 | (c) A physician shall not request or require a patient to
209 | waive her ability to either file a complaint with any
210 | disciplinary body or to litigate a cause of action based on the
211 | care received related to an abortion or a violation of her
212 | rights.

213 | (d)~~(e)~~ Violation of this subsection by a physician
214 | constitutes grounds for disciplinary action under s. 458.331 or
215 | s. 459.015. Substantial compliance or reasonable belief that
216 | complying with the requirements of informed consent would
217 | threaten the life or health of the patient is a defense to any
218 | action brought under this paragraph.

219 | (12) WAITING PERIOD FOR ABORTION.--Except in the case of a
220 | medical emergency, no physician shall perform or induce an
221 | abortion on any woman unless, at least 24 hours prior thereto, a
222 | treating physician has conferred with the woman, or her court-

223 appointed guardian if she is mentally incompetent, pursuant to
224 the requirements set forth in subsection (3).

225 Section 2. Section 390.01112, Florida Statutes, is created
226 to read:

227 390.01112 Women's reproductive bill of rights.--

228 (1) All abortion clinics and physician abortion providers
229 shall adopt and make public a statement of the rights of
230 patients seeking abortions and shall treat such patients in
231 accordance with the provisions of that statement. The statement
232 shall assure each patient all of the following:

233 (a) That her abortion must be performed by a physician as
234 defined in s. 390.011.

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

239 (c) That she is required to have an ultrasound and she has
240 the right to view the live ultrasound images and have them
241 contemporaneously reviewed and explained to her. She has the
242 right to decline to view the ultrasound after it is offered to
243 her to view.

244 (d) That she is entitled to know the probable gestational
245 age of the fetus at the time the abortion is to be performed, as
246 verified by an ultrasound.

247 (e) That, unless a medical emergency exists, she must
248 receive an ultrasound and be provided all the information
249 required under s. 390.0111(3) no less than 24 hours prior to her
250 abortion.

251 (f) That, if she is in her third trimester of pregnancy,
252 any abortion must be performed in a hospital.

253 (g) That either the patient, or her court-appointed
254 guardian if she is mentally incompetent, as set forth in s.
255 390.0111(3) is entitled to provide voluntary and informed,
256 written consent, unless a legal exception to obtaining informed
257 consent exists, before an abortion can be performed or induced.

258 (h) That, if she is a minor, her parent or legal guardian
259 as set forth in s. 390.01114(3) is entitled to receive actual or
260 constructive notice, unless a legal exception to compliance with
261 notice requirements exists, before an abortion can be performed
262 or induced.

263 (i) That she is entitled to printed materials containing a
264 description of the fetus, a list of entities that offer
265 alternatives to terminating the pregnancy, and detailed
266 information on the availability of medical assistance benefits
267 for prenatal care, childbirth, and neonatal care.

268 (j) That she is entitled to be notified of the medical
269 risks of undergoing or not undergoing the proposed procedure
270 that a reasonable patient would consider material to making a
271 knowing and willful decision of whether to terminate the
272 pregnancy.

273 (k) That she is entitled to notification of the medical
274 risks to her and her fetus of carrying the pregnancy to term.

275 (l) That the clinic, physician, or physician's office is
276 not allowed to request or require her to waive her right to
277 either file a complaint with any disciplinary body or to
278 litigate a cause of action based on the care received related to

279 an abortion or a violation of her rights in order to obtain an
280 abortion.

281 (m) That she is entitled to have all medical records
282 pertaining to her abortion treatment made, protected, and
283 preserved by the physician abortion provider and clinic, and
284 that copies of her medical records shall be made available to
285 her, a representative of her estate, her court-appointed
286 guardian if she is mentally incompetent, her parent or legal
287 guardian pursuant to s. 390.01114(3)(d) if she is a minor, or
288 her legal representative upon request.

289 (n) That she is entitled to any and all adequate,
290 necessary, and appropriate health care related to the
291 performance or inducement of an abortion, including any and all
292 adequate, necessary, and appropriate postabortion recovery and
293 medical care.

294 (o) That, if she is in her second trimester of pregnancy,
295 she is entitled to receive care that meets all the quality and
296 safety standards set forth in this chapter, including all
297 requirements provided for in s. 390.012(3).

298 (p) That she, or her court-appointed guardian if she is
299 mentally incompetent, has the right to refuse medication or
300 treatment and to be informed of the consequences of such
301 decisions. When the medication or treatment is refused, the
302 abortion clinic or physician must notify the patient or her
303 court-appointed guardian of the consequences of such decisions
304 and must document the decision in the patient's medical record.
305 The abortion clinic or physician must continue to provide other
306 services that the patient or her court-appointed guardian agrees

307 to in accordance with the patient's care or treatment needs.

308 (q) That she is entitled to have privacy in her treatment
309 and care, and that, except as provided herein or elsewhere in
310 law, her medical records shall remain confidential pursuant to
311 all applicable state and federal laws.

312 (r) That she has the right to a prompt and reasonable
313 response to any question she may have regarding her care or
314 treatment.

315 (s) That she has the right to be treated courteously,
316 fairly, and with the fullest measure of dignity at all times and
317 upon all occasions.

318 (2) All clinics and physician abortion providers shall
319 orally inform patients seeking abortions of their rights as set
320 forth herein and shall provide a copy of the statement as
321 provided in subsection (1) to each patient, or her court-
322 appointed guardian if the patient is mentally incompetent,
323 before performing an abortion. The statement shall itemize each
324 of the rights set forth in subsection (1) separately, including
325 each entitlement in s. 390.012 available to a patient obtaining
326 a second trimester abortion. The clinic or physician practicing
327 in a doctor's office shall provide a copy of the patients' bill
328 of reproductive rights to each staff member of the clinic or
329 physician's office. Each clinic or physician shall prepare a
330 written plan and provide appropriate staff training to implement
331 the provisions of this section. The written statement of rights
332 must include a statement that a patient may file a complaint
333 with the agency or department. The statement must be in
334 boldfaced, 14-point type and shall include the website and

335 telephone number of the agency and department.

336 (3) Any violation of a patient's rights as set forth in
337 this section by a clinic shall constitute grounds for action by
338 the agency under the provisions of ss. 390.012, 408.813,
339 408.814, and 408.815. Any violation of a patient's rights as set
340 forth in this section by a physician shall constitute grounds
341 for disciplinary action under s. 458.331 or s. 459.015.

342 (4) Any person who submits or reports a complaint
343 concerning a suspected violation of the patient's rights or
344 concerning services or conditions in a clinic or physician's
345 office or who testifies in any administrative or judicial
346 proceeding arising from such complaint shall have immunity from
347 any criminal or civil liability therefor, unless that person has
348 committed perjury in his or her testimony or acted in bad faith
349 or with malicious purpose or if the court finds that there was a
350 complete absence of a justiciable issue of either law or fact
351 raised by the losing party.

352 Section 3. Section 390.01113, Florida Statutes, is created
353 to read:

354 390.01113 Civil action for violations of patients' rights;
355 relief.--

356 (1) Any patient whose rights as specified in s. 390.01112
357 are violated has a cause of action against any physician, nurse,
358 or clinic for the violation. The action may be brought by the
359 patient, her parent or legal guardian if the patient is a minor,
360 her court-appointed guardian if the patient is mentally
361 incompetent, or a personal representative of the estate of the
362 patient to enforce the right.

363 (2) The action may be brought in any court of competent
364 jurisdiction to enforce such rights and to recover actual
365 damages and punitive damages when malicious, wanton, or willful
366 disregard of the rights of others can be shown. Any plaintiff
367 who prevails in any such action for any amount is entitled to
368 recover reasonable attorney's fees, costs of the action, and
369 damages, unless the court finds that the plaintiff has acted in
370 bad faith or with malicious purpose or that there was a complete
371 absence of a justiciable issue of either law or fact. A
372 prevailing defendant is entitled to recover reasonable
373 attorney's fees under s. 57.105 only if the court determines
374 that the plaintiff's claim involved a complete absence of
375 justiciable law or fact. The remedies provided in this section
376 are in addition to other legal and administrative remedies
377 available to a patient, her estate, or to the agency or
378 department.

379 (3) Attorney's fees shall be based on the following
380 criteria:

381 (a) The time and labor required.

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

383 (c) The skill requisite to perform the legal service
384 properly.

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

387 (e) The customary fee.

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

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

390 (h) The experience, reputation, and ability of the

391 attorney.

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

393 (j) The type of fee arrangement between the attorney and
 394 the client.

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

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

399 (4) Any action brought under this section is not a claim
 400 for medical malpractice and chapter 766 does not apply. The
 401 provisions of s. 768.21(8) do not apply to a claim alleging
 402 death of the patient.

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

408 Section 4. Subsection (3), paragraphs (a), (c), and (e) of
 409 subsection (4), and subsection (6) of section 390.01114, Florida
 410 Statutes, are amended to read:

411 390.01114 Parental Notice of Abortion Act.--

412 (3) NOTIFICATION REQUIRED.--

413 (a)1.a. Actual notice shall be provided by the physician
 414 performing or inducing the termination of pregnancy before the
 415 performance or inducement of the termination of the pregnancy of
 416 a minor. The notice may be given by a referring physician. The
 417 physician who performs or induces the termination of pregnancy
 418 must receive the written statement of the referring physician

419 certifying that the referring physician has given notice. If
 420 actual notice is provided by telephone, the physician must
 421 actually speak with the parent or guardian and must record in
 422 the minor's medical file the name of the parent or guardian
 423 provided notice, the phone number dialed, and the date and time
 424 of the call.

425 b. If actual notice is not possible after a reasonable
 426 effort has been made, the physician performing or inducing the
 427 termination of pregnancy or the referring physician must give
 428 constructive notice. If constructive notice is given, the
 429 physician must document that notice by placing copies of any
 430 document related to the constructive notice, including, but not
 431 limited to, a copy of the letter and the return receipt, in the
 432 minor's medical file.

433 2. Notice given under this subsection by the physician
 434 performing or inducing the termination of pregnancy must include
 435 the name and address of the facility providing the termination
 436 of pregnancy and the name of the physician providing notice.
 437 Notice given under this subsection by a referring physician must
 438 include the name and address of the facility where he or she is
 439 referring the minor and the name of the physician providing
 440 notice. ~~If actual notice is provided by telephone, the physician~~
 441 ~~must actually speak with the parent or guardian, and must record~~
 442 ~~in the minor's medical file the name of the parent or guardian~~
 443 ~~provided notice, the phone number dialed, and the date and time~~
 444 ~~of the call. If constructive notice is given, the physician must~~
 445 ~~document that notice by placing copies of any document related~~
 446 ~~to the constructive notice, including, but not limited to, a~~

447 ~~copy of the letter and the return receipt, in the minor's~~
 448 ~~medical file.~~

449 (b) Notice is not required if:

450 1. In the physician's good faith clinical judgment, a
 451 medical emergency exists and there is insufficient time for the
 452 attending physician to comply with the notification
 453 requirements. If a medical emergency exists, the physician may
 454 proceed but must document reasons for the medical necessity in
 455 the patient's medical records;

456 2. Notice is waived in writing by the person who is
 457 entitled to notice;

458 3. Notice is waived by the minor who is or has been
 459 married or has had the disability of nonage removed under s.
 460 743.015 or a similar statute of another state;

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

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

464 (c) Violation of this subsection by a physician
 465 constitutes grounds for disciplinary action under s. 458.331 or
 466 s. 459.015.

467 (d) Any parent or legal guardian of a minor upon whom a
 468 termination of pregnancy has been performed or induced who did
 469 not receive actual or constructive notice from the physician who
 470 performed or induced the termination of pregnancy, where an
 471 exception to notice pursuant to paragraph (b) did not exist,
 472 may, in a civil action, obtain appropriate relief, unless the
 473 pregnancy resulted from the parent or legal guardian's criminal
 474 conduct.

475 (e) In a civil action under paragraph (d), appropriate
 476 relief includes:

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

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

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

484 (a) A minor may petition any circuit court in a judicial
 485 circuit within the jurisdiction of the District Court of Appeal
 486 in which she resides for a waiver of the notice requirements of
 487 subsection (3) and may participate in proceedings on her own
 488 behalf. The petition may be filed under a pseudonym or through
 489 the use of initials, as provided by court rule. The petition
 490 must include a statement that the petitioner is pregnant and
 491 notice has not been waived. The court shall advise the minor
 492 that she has a right to court-appointed counsel and shall
 493 provide her with counsel upon her request at no cost to the
 494 minor. The court shall appoint a guardian ad litem for the
 495 minor.

496 (c) If the court finds, by clear and convincing evidence,
 497 that the minor is sufficiently mature to decide whether to
 498 terminate her pregnancy, the court shall issue an order
 499 authorizing the minor to consent to the performance or
 500 inducement of a termination of pregnancy without the
 501 notification of a parent or guardian.

- 502 1. Factors a court shall consider when determining whether

503 a minor is sufficiently mature include, but are not limited to,
504 the following:

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

507 (I) The minor's age.

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

509 (III) The minor's emotional development; and

510 b. Whether the minor is well informed enough to make the
511 decision on her own, as evidenced by:

512 (I) The minor's ability to assess both the immediate and
513 long-range consequences of her choices.

514 (II) The minor's ability to understand and explain the
515 nature and risks of undergoing or not undergoing a procedure to
516 terminate her pregnancy and to apply that understanding to her
517 decision.

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

521

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

524 (e) A court that conducts proceedings under this section
525 shall:

526 1. Provide for a written transcript of all testimony and
527 proceedings.

528 2. Issue a written final order containing all factual
529 findings and legal conclusions, including factual findings and
530 legal conclusions as to whether the petitioner is sufficiently

531 mature based on the factors set forth in subparagraph(c)1.
 532 3. Order that a confidential record be maintained as
 533 required under s. 390.01116. All hearings under this section,
 534 including appeals, shall remain confidential and closed to the
 535 public, as provided by court rule. A court that conducts
 536 ~~proceedings under this section shall provide for a written~~
 537 ~~transcript of all testimony and proceedings and issue written~~
 538 ~~and specific factual findings and legal conclusions supporting~~
 539 ~~its decision and shall order that a confidential record be~~
 540 ~~maintained, as required under s. 390.01116. At the hearing, the~~
 541 ~~court shall hear evidence relating to the emotional development,~~
 542 ~~maturity, intellect, and understanding of the minor, and all~~
 543 ~~other relevant evidence. All hearings under this section,~~
 544 ~~including appeals, shall remain confidential and closed to the~~
 545 ~~public, as provided by court rule.~~
 546 (6) REPORT.--The Supreme Court, through the Office of the
 547 State Courts Administrator, shall report by February 1 of each
 548 year to the Governor, the President of the Senate, and the
 549 Speaker of the House of Representatives on the number of
 550 petitions filed under subsection (4) for the preceding year, and
 551 the timing and manner of disposal of such petitions by each
 552 circuit court. For each petition, the report shall state the
 553 judicial circuit within which the minor resided; whether the
 554 petition was granted or denied based on the minor's maturity or
 555 the best interest of the minor, or both; whether the minor was
 556 represented by court-appointed or private counsel; and the age
 557 of the minor.

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558 Section 5. Section 390.01117, Florida Statutes, is created
559 to read:

560 390.01117 Civil action for negligence; remedies.--

561 (1) Any patient who suffers injury or death as a result of
562 an abortion shall have a cause of action for negligence. The
563 action may be brought by the patient, her parent or legal
564 guardian if the patient is a minor, her court-appointed guardian
565 if the patient is mentally incompetent, or a personal
566 representative of the estate of the patient regardless of the
567 cause of death to enforce the right. If the claim involves
568 negligence or injury to the patient that resulted in her death,
569 then the plaintiff shall be entitled to recover both survival
570 damages pursuant to s. 46.021 and wrongful death damages
571 pursuant to s. 768.21. If the action alleges a claim for injury
572 to the patient that did not cause her death, the personal
573 representative of the estate may recover damages for negligence
574 that caused injury to the patient.

575 (2) The action may be brought in any court of competent
576 jurisdiction to enforce such rights and to recover actual
577 damages and punitive damages when malicious, wanton, or willful
578 disregard of the rights of others can be shown. Any plaintiff
579 who prevails in any such action for any amount is entitled to
580 recover reasonable attorney's fees, costs of the action, and
581 damages, unless the court finds that the plaintiff has acted in
582 bad faith or with malicious purpose or that there was a complete
583 absence of a justiciable issue of either law or fact. A
584 prevailing defendant is entitled to recover reasonable
585 attorney's fees under s. 57.105 only if the court determines

586 that the plaintiff's claim involved a complete absence of
587 justiciable law or fact. The remedies provided in this section
588 are in addition to other legal and administrative remedies
589 available to a patient, her estate, or to the agency or
590 department.

591 (3) Attorney's fees shall be based on the following
592 criteria:

593 (a) The time and labor required.

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

595 (c) The skill requisite to perform the legal service
596 properly.

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

599 (e) The customary fee.

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

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

602 (h) The experience, reputation, and ability of the
603 attorneys.

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

605 (j) The type of fee arrangement between the attorney and
606 the client.

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

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

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

614 (a) The defendant owed a duty to the patient.
 615 (b) The defendant breached the duty to the patient.
 616 (c) The breach of the duty was a legal cause of loss,
 617 injury, death, or damage to the patient.
 618 (d) The patient sustained loss, injury, death, or damage
 619 as a result of the breach.
 620 (5) Nothing in this section shall be interpreted to create
 621 strict liability. Injury or death resulting to the patient shall
 622 be evidence of negligence, but shall not be negligence per se.
 623 (6) In any claim brought under this section, a clinic,
 624 person, or entity shall have a duty to exercise reasonable care.
 625 Reasonable care is that degree of care that a reasonably careful
 626 clinic, person, or entity would use under like circumstances.
 627 (7) In any claim for negligence by a physician, such
 628 physician shall have the duty to exercise care consistent with
 629 the prevailing professional standard of care for physicians. The
 630 prevailing professional standard of care for physicians shall be
 631 that level of care, skill, and treatment that, in light of all
 632 relevant surrounding circumstances, is recognized as acceptable
 633 and appropriate by reasonably prudent similar physicians.
 634 (8) In any claim for negligence by a licensed practical
 635 nurse, registered nurse, or advanced registered nurse
 636 practitioner licensed under part I of chapter 464, such nurse
 637 shall have the duty to exercise care consistent with the
 638 prevailing professional standard of care for such a nurse. The
 639 prevailing professional standard of care for such a nurse shall
 640 be that level of care, skill, and treatment that, in light of
 641 all relevant surrounding circumstances, is recognized as

642 acceptable and appropriate by reasonably prudent similar nurses.

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

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

652 Section 6. Section 390.01118, Florida Statutes, is created
653 to read:

654 390.01118 Statute of limitations.--Any action for damages
655 brought under s. 390.01113, s. 390.01114(3)(d)-(f), or s.
656 390.01117 shall be commenced within 2 years from the time the
657 incident giving rise to the action occurred or within 2 years
658 from the time the incident is discovered or should have been
659 discovered with the exercise of due diligence. In those actions
660 covered by s. 390.01113, s. 390.01114(3)(d)-(f), or s. 390.01117
661 in which it can be shown that fraudulent concealment or
662 intentional misrepresentation of fact prevented discovery of the
663 injury, the period of limitations is extended forward 2 years
664 from the time the injury is discovered with the exercise of due
665 diligence.

666 Section 7. Section 390.01118, Florida Statutes, as created
667 by this act, shall apply to causes of action that have accrued
668 prior to the effective date of that section; however, any such
669 cause of action that would not have been barred under prior law

670 may be brought within the time allowed by prior law or within 2
 671 years after the effective date of that section, whichever is
 672 earlier, and will be barred thereafter.

673 Section 8. Section 390.01119, Florida Statutes, is created
 674 to read:

675 390.01119 Medical records.--

676 (1) Any person who fraudulently alters, defaces, or
 677 falsifies any medical record related to an abortion or causes or
 678 procures any of these offenses to be committed commits a
 679 misdemeanor of the second degree, punishable as provided in s.
 680 775.082 or s. 775.083.

681 (2) A conviction under subsection (1) is also grounds for
 682 disciplinary action under a licensee's applicable practice act,
 683 which discipline may include restriction, suspension, or
 684 termination of a licensee's privileges.

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

687 390.012 Powers of agency; rules; disposal of fetal
 688 remains.--

689 (1) The agency may develop and enforce rules pursuant to
 690 ss. 390.011-390.018 ~~390.001-390.018~~ and part II of chapter 408
 691 for the health, care, and treatment of persons in abortion
 692 clinics and for the safe operation of such clinics.

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

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

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

700 (d) The rules shall prohibit a clinic from requesting or
 701 requiring a patient to waive her ability to either file a
 702 complaint with any disciplinary body or to litigate a cause of
 703 action based on the care received in the clinic or a violation
 704 of her rights.

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

706 1. The performance of pregnancy termination procedures
 707 only by a licensed physician.

708 2. The making, protection, and preservation of patient
 709 records, which shall be treated as medical records under chapter
 710 458.

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

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

718 1. A medical history including reported allergies to
 719 medications, antiseptic solutions, or latex; past surgeries; and
 720 an obstetric and gynecological history.

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

723 3. The appropriate laboratory tests, including:

- 724 a. ~~For an abortion in which an ultrasound examination is~~
725 ~~not performed before the abortion procedure,~~ Urine or blood
726 tests for pregnancy performed before the abortion procedure.
- 727 b. A test for anemia.
- 728 c. Rh typing, unless reliable written documentation of
729 blood type is available.
- 730 d. Other tests as indicated from the physical examination.
- 731 4. An ultrasound evaluation for all patients ~~who elect to~~
732 ~~have an abortion after the first trimester.~~ The rules shall
733 require that if a person who is not a physician performs an
734 ultrasound examination, that person shall have documented
735 evidence that he or she has completed a course in the operation
736 of ultrasound equipment as prescribed in rule. The physician,
737 registered nurse, licensed practical nurse, advanced registered
738 nurse practitioner, or physician assistant shall review and
739 explain, ~~at the request of the patient,~~ the live ultrasound
740 images ~~evaluation results,~~ including an estimate of the probable
741 gestational age of the fetus, with the patient before the
742 abortion procedure is performed, unless the patient declines
743 pursuant to s. 390.0111. If the patient declines to view the
744 live ultrasound images, the rules shall require that s. 390.0111
745 be complied with in all other respects.
- 746 5. That the physician is responsible for estimating the
747 gestational age of the fetus based on the ultrasound examination
748 and obstetric standards in keeping with established standards of
749 care regarding the estimation of fetal age as defined in rule
750 and shall write the estimate in the patient's medical history.

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751 The physician shall keep original prints of each ultrasound
752 examination of a patient in the patient's medical history file.

753 Section 10. It is the intent of this act and the
754 Legislature to accord the utmost comity and respect to the
755 constitutional prerogatives of Florida's judiciary, and nothing
756 in this act should be construed as any effort to impinge upon
757 those prerogatives. To that end, should any court of competent
758 jurisdiction enter a final judgment concluding or declaring that
759 any provision of this act improperly encroaches upon the
760 authority of the Florida Supreme Court to determine the rules of
761 practice and procedure in Florida courts, the Legislature hereby
762 declares its intent that any such provision be construed as a
763 request for rule change pursuant to s. 2, Art. V of the State
764 Constitution and not as a mandatory legislative directive.

765 Section 11. If any provision of this act or the
766 application thereof to any person or circumstance is held
767 invalid, the invalidity does not affect other provisions or
768 applications of the act which can be given effect without the
769 invalid provision or application, and to this end the provisions
770 of this act are declared severable.

771 Section 12. This act shall take effect July 1, 2008.