

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 865 Abortion
SPONSOR(S): Van Zant and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1718

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|----------|---------|--|
| 1) Criminal Justice Subcommittee | 8 Y, 3 N | Keegan | White |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

In 1973, the United States Supreme Court decided *Roe v. Wade*, establishing a fundamental constitutional right to abortion. Current federal constitutional law examines a state's abortion laws under the undue burden test. Restrictions on abortion in Florida, however, are evaluated under the more stringent compelling state interest standard.

Current state statutory law provides that an abortion performed in the first or second trimester of pregnancy is legal. In the third trimester, current law prohibits an abortion from being performed unless:

- Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the woman's life or prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the woman; or
- The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or prevent serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

The bill changes Florida's law on abortion to:

- Define key terms;
- Create a near full prohibition on abortion in any trimester, leaving a narrow exception for the life and health of the mother;
- Provide that performing an abortion, except where authorized, is a first degree felony;
- Repeal numerous sections of statute relating to termination of pregnancy;
- Revise the informed consent requirements for termination of pregnancy procedures, including requiring parental consent before performing an abortion on a minor (which requirement effectively repeals the statutory judicial bypass of parental notice); and
- Make conforming changes.

The Criminal Justice Impact Conference has not yet determined the prison bed impact of the bill. However, according to a preliminary estimate by the Criminal Justice Impact Conference, the bill will have a positive significant prison bed impact on the Department of Corrections (i.e., an increase of 25 or more prison beds).

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Constitutional Abortion Law

In 1973, *Roe v. Wade* was decided by the U.S. Supreme Court, establishing legal access to abortions throughout the nation.¹ Using a strict scrutiny analysis,² the Court determined that a woman's right to an abortion is part of the fundamental right to privacy guaranteed all persons under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.³ Further, the Court found that a state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.⁴ The U.S. Supreme Court established a trimester framework for the regulation of abortions, prohibiting most state regulation of abortion in the first trimester while holding that in the third trimester a state could prohibit all abortions except where woman's life or health was at risk.⁵

In 1989, the Florida Supreme Court decided *In re T.W., A Minor*,⁶ establishing a state-specific approach to abortion law under the Florida Constitution's express right to privacy.⁷ The Florida Constitution provides in part, "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."⁸ The Florida Supreme Court determined that Florida's constitutional right to privacy is "clearly implicated" in a woman's decision whether to terminate her pregnancy.⁹ Specifically, *In re T.W.* held:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability.¹⁰

Nineteen years after *Roe v. Wade*, and 3 years after *In re T.W.*, the United States Supreme Court changed the federal standard of review of a state's abortion laws in *Planned Parenthood v. Casey*.¹¹ There, the Court replaced the strict scrutiny standard of *Roe v. Wade* with the undue burden test when evaluating state laws impacting the right to abortion.¹² "An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."¹³

In the years since, the U.S. Supreme Court has found a variety of abortion restrictions to constitute an undue burden. For instance, restrictions which amount to a third party veto on the mother's access to

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² "Strict scrutiny" is a standard of judicial review that is applied when evaluating the constitutionality of infringements on a fundamental right or to the peculiar disadvantage of a suspect class. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312-13 (1976); see also *A.M. ex rel. McAllum v. Cash*, 585 F.3d 214 (5th Cir. 2009). Under the strict scrutiny standard, the government infringement in question is not entitled to the normal presumption of validity, rather the state must demonstrate that the infringement is necessary to promote a compelling government interest. *Burson v. Freeman*, 504 U.S. 191, 220-22 (1992); *Dunn v. Blumstein*, 405 U.S. 330, 338-39 (1972).

³ *Roe v. Wade*, 410 U.S. at 153-54.

⁴ *Id.* at 155-56.

⁵ *Id.* at 160-64.

⁶ *In re T.W. A Minor*, 551 So. 2d 1186 (Fla. 1989).

⁷ *Id.*

⁸ FLA. CONST. art. I, s. 23.

⁹ *In re T.W., A Minor*, 551 So. 2d at 1192.

¹⁰ *Id.* at 1193-94.

¹¹ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

¹² *Id.* at 879.

¹³ *Id.* at 836.

an abortion, such as a spousal notice requirement¹⁴ or a parental consent requirement,¹⁵ constitute an undue burden. Laws that restrict the use of common methods of abortion without demonstrating that they are necessary for the preservation of the health of the mother also constitute an undue burden.¹⁶ While states have a legitimate interest in protecting potential life through the pregnancy term,¹⁷ this interest is only a compelling interest after the fetus becomes viable.¹⁸

In 2000, the United States Supreme Court, in *Stenberg v. Carhart*, affirmed the continued validity of the ruling in *Casey* that a law that furthers the state's legitimate interest in the life of the fetus is nevertheless unconstitutional if the law imposes an undue burden.¹⁹

Importantly, however, Florida's constitutional right of privacy is more robust today than the federal right to privacy. The Florida courts continue to review abortion laws under the compelling state interest standard, rather than the less stringent undue burden standard required under the U.S. Constitution.²⁰

Statutory Abortion Law

Generally

In Florida, abortion is addressed in ch. 390, F.S. It is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.²¹ An abortion must be consensual²² and must be performed by a physician licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.²³

Abortion in the First or Second Trimester

In general, there is minimal regulation of abortion in the first and second trimester.

During the 2015 Legislative Session, HB 633 passed and was signed into law.²⁴ The bill amended s. 390.0111(3)(a), F.S., to require a doctor to verbally inform a woman seeking an abortion of statutorily-required information²⁵ while "physically present in the same room," at least 24 hours before the abortion procedure is performed.²⁶ The bill effectively created a 24-hour waiting period for women seeking abortions. Several interested parties filed suit in the Second Circuit Court of Florida in *Gainesville Woman Care, LLC, et al., v. Florida*, seeking to enjoin the state from enforcing the waiting period requirement.²⁷ On June 30, 2015, one day before the law was to take effect, a Circuit Court judge entered an order finding the new law unconstitutional under Florida's right to privacy.²⁸ In holding the provision unconstitutional, the court reaffirmed the more stringent compelling state interest standard that was established by *In re T.W.*²⁹ In light of this standard, the court determined that this new law created an additional and unjustified burden on a woman's right of privacy under the Right of Privacy

¹⁴ *Id.* at 887-88 (holding that a spousal notification statute was unconstitutional because requiring proof of notification would often be tantamount to giving the husband veto power over the mother's decision).

¹⁵ *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979).

¹⁶ *Stenberg v. Carhart*, 530 U.S. 914, 936-37 (2000).

¹⁷ *Webster v. Reproductive Health Servs.*, 492 U.S. 490 (1989).

¹⁸ *City of Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416 (1983).

¹⁹ *Stenberg v. Carhart*, 530 U.S. at 914.

²⁰ *North Fla. Women's Health & Counseling Servs., Inc. v. Florida*, 866 So. 2d 612, 620-21 (Fla. 2003).

²¹ s. 390.011(1), F.S.

²² A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian. s. 390.0111(3), F.S.

²³ s. 390.0111(2), F.S.

²⁴ ch. 15-118, Laws of Fla.

²⁵ Pursuant to s. 390.011(3)(a)1., F.S., the physician must inform the woman of 1) the nature and risks of undergoing or abstaining from the procedure that a reasonable patient would consider material to making a knowing and willful decision, 2) the estimated gestational age of the fetus, confirmed by an ultrasound that has been taken at the time the procedure is to be performed, and 3) the medical risks the woman and fetus are exposed to by carrying the pregnancy to term.

²⁶ s. 390.011(3)(a), F.S.

²⁷ *Gainesville Woman Care, LLC, et al., v. Florida*, 22 Fla. L. Weekly Supp. 1149 (Fla. 2d Cir. June, 30, 2016).

²⁸ *Id.*

²⁹ *Id.* at 1150.

Clause³⁰ in the Florida Constitution.³¹ Defendants in the case filed a notice of appeal with Florida's First District Court of Appeal on July 1, 2015, and the case is currently pending before that court.³²

Section 627.64995, F.S., prohibits providing coverage for an abortion³³ with an insurance policy under which coverage is purchased in any part with state or federal funds through an exchange created under the Patient Protection and Affordable Care Act. An exception exists for pregnancies resulting from:

- Rape;
- Incest; or
- A circumstance where a woman has a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, which would, as certified by a physician, place the woman in danger of death unless an abortion is performed.³⁴

A health insurance policy may offer separate coverage for abortions, if the coverage is not purchased in any part with state or federal funds.³⁵

Abortion in the Third Trimester

Section 390.0111, F.S., prohibits an abortion from being performed in the third trimester³⁶ unless:

- Two physicians certify in writing that, in his or her reasonable medical judgment, the termination of the pregnancy is necessary to save the woman's life or prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the woman;³⁷ or
- A physician certifies in writing that, in his or her reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or prevent serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.³⁸

Section 390.0111(10), F.S., specifies that any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of s. 390.0111, F.S.,³⁹ or s. 390.01112, F.S.,⁴⁰ commits a third degree felony.⁴¹ If doing so results in the death of the woman, the person commits a second degree felony.⁴²

Parental Notice and Consent of Abortion by a Minor

In general, no medical procedure may be performed on a minor without the consent of the parents. However, there are two exceptions: a medical emergency,⁴³ and a minor female may consent to an abortion.⁴⁴ Where a minor female consents on her own to an abortion, s. 390.01114, F.S., requires that the parents of the minor be given advance notice of the abortion procedure to be performed on the minor, with two exceptions: where there is a medical emergency or where a court waives the parental notification requirement. The judicial waiver procedure is required by article X, s. 22 of the state constitution.

³⁰ Art. I, sec. 23, FLA. CONST.

³¹ *Gainesville Women Care, et al., v. Florida*, at 1151.

³² *Id.* at 1149 (*editor's note*).

³³ For purposes of this section, "abortion" is defined pursuant to s. 390.011(1), F.S., discussed in detail above.

³⁴ s. 627.64995(1), F.S.

³⁵ s. 627.64995(2), F.S.

³⁶ s. 390.011(11), F.S., defines "third trimester" as the weeks of pregnancy after the 24th week of pregnancy.

³⁷ "Physical impairment of a major bodily function" does not include a psychological condition. s. 390.0111(1)(b), F.S.

³⁸ s. 390.0111(1), F.S.

³⁹ This prohibition does not apply to subsections (3) (relating to consent), (7) (relating to disposition of fetal remains), and (12), relating to infants born alive.

⁴⁰ Section 390.01112, F.S., relates to the termination of pregnancies during viability.

⁴¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁴² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁴³ s. 743.064, F.S.

⁴⁴ s. 743.065, F.S.

Office of Adoption and Child Protection

Section 39.001(9), F.S., establishes the Office of Adoption and Child Protection (OACP) within the Executive Office of the Governor to create a comprehensive approach to promoting adoption, supporting adoptive families, and preventing child abuse, abandonment, and neglect.⁴⁵ The OACP handles a wide variety of responsibilities, such as:

- Overseeing the preparation and implementation of the comprehensive state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children, pursuant to s. 39.001(10), F.S.;
- Providing continuing professional education and training in the prevention of child abuse and neglect; and
- Securing funding for the promotion of adoption, support of adoptive families, and child abuse prevention.

While the OACP has a primary focus of promoting adoption, the OACP is not currently required to maintain databases of information related to legal adoption assistance, or provide such information to the public.

Contraceptives

“Emergency contraception” (EC) is any device or drug that is used as a method to prevent pregnancy after unprotected sexual intercourse.⁴⁶ An “abortifacient” is any device or drug that acts *after* implantation of a zygote⁴⁷ in the uterus.⁴⁸ Reliable scientific research does not indicate that contraceptives, including EC, act as an abortifacient.⁴⁹ However, there are differing scientific views on the impact that contraceptives may have on the implantation of a zygote.

The Western Journal of Medicine published an article in 2002 concluding that certain ECs may act, in part, to prevent the implantation of a zygote;⁵⁰ however, the article conceded that the precise mechanism for how these contraceptives work has not been determined.⁵¹ A more recent article published in *Ethics & Medicine* in 2012 found that the prevailing scientific conclusion about compliant combination oral contraceptive⁵² use was that such agents do not have any measureable effect once fertilization has occurred.⁵³ The article recognized that the scientific conclusions regarding ECs were not as clear, but after a review of the available research, determined that there is a lack of any substantial evidence for post-fertilization effects.⁵⁴ In spite of these peer-reviewed conclusions, the United States Food and Drug Administration (FDA) currently labels both commonly-used ECs, Plan B (0.75mg levonorgestrel) and Plan B One-Step (1.5mg levonorgestrel) tablets as possibly interfering with implantation of a zygote in the uterus.⁵⁵

⁴⁵ s. 39.001(9)(a), F.S.

⁴⁶ Marisa N. Mendez, *Emergency Contraception: A Review of Current Oral Options*, 176.3 WEST. J. MEDICINE 188, 188 (May 2002).

⁴⁷ A “zygote” is the cell created by the union of a sperm cell and an ovum. MEDICINENET, *Definition of Zygote*, <http://www.medicinenet.com/script/main/art.asp?articlekey=6074> (last visited Jan. 19, 2016).

⁴⁸ Mendez, *supra* note 46.

⁴⁹ Pam Belluck, *Abortion Qualms on Morning-After Pill May be Unfounded*, THE NEW YORK TIMES (June 5, 2012),

http://www.nytimes.com/2012/06/06/health/research/morning-after-pills-dont-block-implantation-science-suggests.html?_r=0 (last visited Jan. 18, 2016).

⁵⁰ Mendez, *supra* note 46 (stating that ECs are thought to act primarily by inhibiting or disrupting ovulation, and may also act by interfering with transport of the ova and/or sperm, or by preventing implantation by changing the structure of the endometrium).

⁵¹ Mendez, *supra* note 46 (stating that the “precise mechanism of action of [the emergency contraceptive pills available on the market] has not been fully elucidated...”).

⁵² A combination oral contraceptive, often known as “the pill,” is an oral contraceptive that contains estrogen and progestin. EC. MAYO CLINIC, *Combination Birth Control Pills*, <http://www.mayoclinic.org/tests-procedures/combination-birth-control-pills/basics/definition/prc-20014056> (last visited Jan. 18, 2016); *see* Lewis, et al., *infra* note 53.

⁵³ Jeffrey D. Lewis, et al., *Abortifacient Potential of Emergency Contraceptives*, 28.3 ETHICS & MEDICINE: AN INTERNATIONAL JOURNAL OF BIOETHICS 113 (Fall 2012).

⁵⁴ Lewis, *supra* note 53.

⁵⁵ U.S. FOOD & DRUG ADMIN., *Plan B (0.75mg levonorgestrel) and Plan B One-Step (1.5 mg levonorgestrel) Tablets Information*, <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm109775.htm> (last visited Jan. 18, 2016).

Effect of the Bill

The bill provides numerous whereas clauses related to the subject of the bill, as well as a statement of legislative intent.

The bill provides the following definitions:

- "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a fetus that has died of natural causes.
- "Human life" means a human person and is the biological development of the species homo sapiens that begins when a human egg is fertilized by a human sperm and continues to develop as a living organism.
- "Induced abortion" means a medically initiated termination of a human pregnancy with the intent to kill a living human organism, zygote, embryo, or fetus. For purposes of this subsection, the term "medically initiated" means the ingestion or administration of pharmaceutical abortifacients by any means, performance of a surgical procedure, or use of any device or instrument and any combination thereof.
- "Medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a patient as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function or unreasonably reduce the likelihood of successful treatment of a life-threatening disease.
- "Patient" means the woman or minor upon whom an abortion or termination of pregnancy is to be performed or induced.
- "Physician" means a physician licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States who is attending to the patient.
- "Pregnancy" means the process by which a human egg is fertilized by a human sperm and continues to develop.
- "Reasonable medical judgment" means a medical judgment made by a practicing physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- "Termination of pregnancy" means the termination of a human pregnancy under circumstances not prohibited by this chapter.
- "Viable" or "viability" means the stage of fetal development when, in the judgment of the physician, based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available, there is a reasonable probability of sustained survival of the unborn human person outside his or her mother's womb with or without artificial support.

The bill prohibits induced abortions during the entire term of any pregnancy for any purpose, except as provided in s. 390.01112, F.S. The bill provides criminal penalties for violations of this section, as follows:

- A person who induces an abortion or performs, attempts to perform, or assists another in the performance of an induced abortion on another person commits a first degree felony.⁵⁶
- A person who during the course of performing an induced abortion on another person inflicts serious bodily injury on the person commits a life felony.⁵⁷
- A person who during the course of performing an induced abortion on another person inflicts serious bodily injury on the person which results in the death of the person commits a life felony.
- A person who operates any facility, business, or service from any location within this state for the purpose of providing induced abortion services commits a first degree felony.

⁵⁶ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082, and 775.083, F.S.

⁵⁷ A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine. ss. 775.082 and 775.083, F.S.

The bill prohibits performing a termination of pregnancy on any human being unless one of the following exceptions is met:

- Two physicians certify in writing that, to a reasonable degree of medical certainty, the termination of the pregnancy is necessary to prevent the death of the patient;
- Two physicians certify in writing that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary because to continue the pregnancy would unreasonably reduce the likelihood of successful treatment of an already life-threatening disease of the patient; or
- The attending physician certifies in writing that one of the aforementioned medical emergencies existed and another physician was not available for consultation before the time necessary to perform the termination of pregnancy. The physician's written certification must clearly describe the details of the medical emergency in the patient's medical records.

Violation of these requirements by a physician may also be punished by professional disciplinary action under ss. 458.331, F.S., or 459.015, F.S.

The bill amends the informed consent requirements for terminations of pregnancy as follows:

- Requires voluntary informed written consent of the minor patient's parent or legal guardian before performing an abortion.
- Adds the court-appointed guardian of a mentally incompetent patient or the parent or legal guardian of a minor patient to the parties who can be provided with the information and materials required to be provided by the physician at least 24 hours prior to an abortion.
- Repeals the provision prohibiting the person performing the required pre-abortion ultrasound from offering the opportunity to view the images or hear the explanation of the images in qualifying cases of rape, incest, domestic violence, human trafficking, or medical need.
- Removes the provision waiving the 24-hour waiting period in qualifying cases of rape, incest, domestic violence, or human trafficking.
- Adds the following to the list of printed materials that must be provided to a woman at least 24 hours before an abortion:
 - An accurate estimate of the stage of biological development, gestational age, length, weight, and viability of the unborn human person.
 - The address and telephone number of the Office of Adoption and Child Protection within the Executive Office of the Governor and information on the existence of a statewide list of attorneys available to provide volunteer legal services for adoption.
- Expands the defenses available to a physician subject to professional disciplinary action for a violation of the informed consent provisions in s. 390.0111(5), F.S., to include circumstances that would unreasonably reduce the successful treatment of an already life-threatening disease of the patient.

The bill makes the following miscellaneous changes:

- Adds professional disciplinary action under s. 458.331, F.S., or s. 459.015, F.S., as a penalty for physicians who violate s. 390.0111(6), F.S., relating to prohibitions against experimentation on a fetus.
- Increases the penalty for failure to dispose of fetal remains in accordance with the rules of the Department of Health from a second degree misdemeanor⁵⁸ to a third degree felony.
- Creates an exception to the prohibitions in s. 390.0111, F.S., for performance of procedures which terminate a pregnancy in order to deliver a live child or to remove a dead child whose demise was not the result of a termination of pregnancy or an induced abortion from the patient's body.
- Requires any physician or authorized personnel of a medical facility who learns that a patient wishes to obtain an abortion, or who had a termination of pregnancy where the fetus survived, must provide the patient with information concerning the availability of adoption for the child. This may be accomplished by providing contact information for the OACP.

⁵⁸ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

- Provides authorization for the Department of Health and the Agency for Healthcare Administration to adopt rules.
- Subjects a physician who violates s. 390.01112, F.S. to professional disciplinary action under ss. 458.331 and 459.015, F.S.
- Requires that a termination of pregnancy be performed in a hospital or medical establishment.
- Makes it a first degree felony to knowingly and willfully misrepresent the gestational age or stage of fetal development of a viable fetus once viability has been determined.

The bill establishes legislative intent to provide assistance to women and minors with unwanted pregnancies who would have obtained an abortion if doing so were legal. The bill also requires the OACP to create and manage a statewide list of attorneys that provide volunteer adoption services, and have deposited, directed, and budgeted in the full amount for use by the office, all moneys received by or otherwise awarded to the state from the Federal Government, the U.S. Treasury, or any other federal agency as a result of efforts made by the office to provide legal or other services for adoption.

The bill repeals the following sections:

- Sections 390.0111(4), F.S., relating to standards of medical care owed to the infant in a third trimester abortion; s. 390.0111(5), F.S., prohibiting partial birth abortion; s. 390.0111(10), F.S., relating to penalties for violations of s. 390.0111, F.S.; and s. 390.0000(11), F.S., creating a civil cause of action against a person who performs a partial birth abortion.
- Section 390.01114, F.S., the Parental Notice of Abortion Act, and the corresponding provision in s. 27.511(5)(a), F.S., providing private counsel to attend judicial bypass hearings.
- Section 390.01116, F.S., providing a public record exemption for identifying information of a minor petitioning a circuit court under s. 390.01114, F.S.
- Section 390.0112, F.S., providing reporting requirements for medical facilities in which any pregnancy termination is performed.
- Section 390.012, F.S., providing regulations for disposal of fetal remains.
- Section 390.014, F.S., providing licensing requirements and restrictions for clinics that provide termination of pregnancy procedures.
- Section 390.015, F.S., providing requirements for applying for a license to operate an abortion clinic.
- Section 390.018, F.S., providing for fines against abortion clinics.
- Section 390.025, F.S., providing regulations applicable to abortion referral or counseling agencies.
- Section 782.30, F.S., providing a short title for ss. 782.30-782.36, F.S., the Partial Birth Abortion Act.
- Section 782.32, F.S., providing definitions for “partially born,” “living fetus,” and “suction or sharp curettage abortion.”
- Section 782.34, F.S., providing a prohibition against partial birth abortion.
- Section 782.36, F.S., providing exceptions to the prohibition against partial birth abortion.

The bill prohibits specified health insurance policies for which coverage is purchased in any part with state or federal funds through the exchange created under the Patient Protection and Affordable Care Act, from being used to cover an induced abortion or a termination of pregnancy. The bill also removes the current exception under these sections for cases of rape, incest, or where the woman suffers from a physical disorder, physical injury, or physical illness, which is certified by a physician to place the woman in danger of death unless an abortion is performed.

The bill removes references to sections of statute repealed by the bill and changes statutory citations to conform to other changes in the bill.

The bill is effective on July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Provides the act may be cited as the “Florida for Life Act.”

Section 2. Provides legislative findings.

Section 3. Amends s. 390.011, F.S., relating to definitions.

Section 4. Amends s. 390.0111, F.S., relating to abortion unlawful; termination of pregnancies; circumstances authorized.

Section 5. Amends s. 390.01112, F.S., relating to termination of pregnancies during viability.

Section 6. Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 7. Repeals ss. 390.01114, 390.01116, 390.0112, 390.012, 390.014, 390.015, 390.018, 390.025, 782.30, 782.32, 782.34, and 782.36, F.S.

Section 8. Amends s. 27.511, F.S., offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 9. Amends s. 627.64995, F.S., relating to restrictions on use of state and federal funds for state exchanges.

Section 10. Amends s. 627.6699, F.S., relating to Employee Health Care Access Act.

Section 11. Amends s. 627.66996, F.S., relating to restrictions on use of state and federal funds for state exchanges.

Section 12. Amends s. 641.31099, F.S., relating to restrictions on use of state and federal funds for state exchanges.

Section 13. Amends s. 743.065, F.S., relating to unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.

Section 14. Amends 743.067, F.S., relating to unaccompanied homeless youths.

Section 15. Amends s. 765.113, F.S., relating to restrictions on providing consent.

Section 16. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet determined the prison bed impact of the bill. However, according to a preliminary estimate by the Criminal Justice Impact Conference, the bill will have a positive significant prison bed impact on the Department of Corrections (i.e., an increase of 25 or more prison beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill increases the penalty for failure to dispose of fetal remains from a second degree misdemeanor to a third degree felony. Thus, the bill may have a negative jail bed impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a broad prohibition against abortion, which will reduce or completely eliminate business revenue for businesses engaged in providing abortion services. Such businesses may suffer losses related to the cost of equipment, licenses, personnel training and retention, and overhead expenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Right to privacy under the Florida Constitution

The bill prohibits abortion except in narrow circumstances implicating the life and health of the mother. The bill also prohibits operation of a business to provide abortion services, even for the life or health of the mother, effectively eliminating access to abortion. Florida's constitutional right to privacy is "clearly implicated" in a woman's decision whether to terminate her pregnancy.⁵⁹ The Florida Supreme Court has repeatedly held that burdens on abortion must meet the compelling state interest standard in order to comply with the Florida Constitution.⁶⁰

Right to privacy under the U.S. Constitution

The bill prohibits abortion except in narrow circumstances implicating the life and health of the mother. *Roe v. Wade* established the fundamental right to abortion.⁶¹ After the U.S. Supreme Court's decision in *Planned Parenthood v. Casey*, this fundamental right is evaluated under the U.S. Constitution using the undue burden test.⁶² A law governing abortion is struck down as an undue burden "if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."⁶³

The bill creates a first degree felony for any person to "operate any facility, business, or service from any location within this state for the purpose of providing induced abortion services" but does not create an exception for induced abortions that are performed in accordance with the life and health of the mother exception in s. 390.01112, F.S. Therefore, the prohibition against any person operating a facility, business, or service to perform such legal abortions appears to effectively eliminate all

⁵⁹ *In re T.W.*, 551 So. 2d at 1192.

⁶⁰ *North Fla. Women's Health & Counseling Servs., Inc. v. Florida*, 866 So. 2d 612, 620-21 (Fla. 2003); *In re T.W.*, 551 So. 2d at 1186.

⁶¹ *Roe v. Wade*, 410 U.S. 113 (1973).

⁶² *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

⁶³ *Planned Parenthood*, 505 U.S. at 836.

access to abortions for any reason, including an abortion necessary to save the life or health of the mother. The U.S. Supreme Court has established that a state may not restrict access to an abortion at any time during the pregnancy if the abortion is “necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.”⁶⁴

Specific Right of a Minor to Abortion

Separate and apart from the right of any woman to an abortion that is presumed to be a part of the right of privacy found in art. I, s. 23 of the state constitution, the state constitution specifically provides abortion rights for minors. Art. X, s. 22 of the state constitution reads:

SECTION 22. Parental notice of termination of a minor’s pregnancy.—The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor’s right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor’s pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

B. RULE-MAKING AUTHORITY:

The bill amends s. 390.0111, F.S., to authorize the Agency for Healthcare Administration to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement s. 390.0111, F.S., except for subsection (7). The bill also authorizes the Department of Health to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S. to implement s. 390.0111(7), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The whereas clauses make a wide variety of statements that cannot be conclusively verified. The facts asserted by the whereas clauses may warrant review.

The bill’s definition of abortion makes it a first degree felony to remove a dead fetus that died of unnatural causes, which could include many events, such as involvement in a car accident or blunt force trauma to the mother’s abdomen.

The bill’s definition of “human life” includes a zygote that has not yet implanted. As discussed above, there is disagreement whether certain ECs may prevent a zygote from implanting in the uterus. The bill could prohibit the use and administration of ECs.

The bill provides a definition of “medical emergency,” but in s. 390.0111(3)(c), F.S., the bill refers to medical emergencies as described in s. 390.0111, F.S., which is inconsistent with the definition of the term created by the bill in s. 390.011, F.S.

The bill amends s. 390.0111(1), F.S. to prohibit induced abortions for any purpose, *except as provided in s. 390.01112, F.S.* In subsection (3), the bill specifically provides a life and health of the mother exception to the prohibition against induced abortions. Because subsection (1) only makes an exception for s. 390.01112, F.S., the life and health exception created in (3) cannot be applied.

The bill creates a first degree felony for any person to “operate any facility, business, or service from any location within this state for the purpose of providing induced abortion services” but does not create an exception for induced abortions that are performed in accordance with the life and health of the mother exception in s. 390.01112, F.S. Therefore, the prohibition against any person operating a facility, business, or service to perform such legal abortions effectively eliminates access to such abortions.

⁶⁴ *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320 (2006) (quoting *Planned Parenthood v. Casey*, 505 U.S. at 880); *Gonzales v. Carhart*, 550 U.S. 124 (2007).

Historically, most bills regarding criminal offenses have an effective date of October 1, whereas this bill has an effective date of July 1.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.