

1                   A bill to be entitled  
2           An act relating to abortion; amending s. 390.011,  
3           F.S.; providing and revising definitions; amending s.  
4           390.0111, F.S.; requiring a physician to perform an  
5           examination for, and inform a woman obtaining an  
6           abortion of the presence of, a detectable fetal  
7           heartbeat; requiring the physician to review the  
8           results of such examination with the patient before  
9           the woman gives informed consent for the abortion  
10          procedure; requiring that the woman certify in writing  
11          that she declined to review the results and did so of  
12          her own free will and without undue influence;  
13          providing criminal penalties; amending s. 390.01112,  
14          F.S.; prohibiting the termination of a pregnancy when  
15          a fetal heartbeat is detected; providing exceptions;  
16          requiring a physician to perform certain examinations  
17          to detect a fetal heartbeat; requiring the physician  
18          to document such findings in the woman's medical file;  
19          providing the standard of care for the termination of  
20          a pregnancy when a fetal heartbeat exists; amending s.  
21          390.012, F.S.; conforming terminology; providing an  
22          effective date.

23  
24          WHEREAS, as many as 30 percent of natural pregnancies end  
25          in spontaneous miscarriage, and

26 WHEREAS, fewer than 5 percent of all natural pregnancies  
 27 end in spontaneous miscarriage after the detection of fetal  
 28 cardiac activity, and

29 WHEREAS, more than 90 percent of in vitro pregnancies do  
 30 not survive the first trimester when cardiac activity is not  
 31 detected in the gestational sac, and

32 WHEREAS, a fetal heartbeat, therefore, is a key medical  
 33 predictor that an unborn human being will reach live birth, and

34 WHEREAS, cardiac activity begins at a biologically  
 35 identifiable moment in time, normally when the fetal heart is  
 36 formed in the gestational sac, and

37 WHEREAS, the State of Florida has a legitimate interest  
 38 from the outset of a pregnancy in protecting the health of the  
 39 woman and the life of the unborn human being who may be born,  
 40 and

41 WHEREAS, in order to make an informed choice about whether  
 42 to continue her pregnancy, the pregnant woman has a legitimate  
 43 interest in knowing the likelihood of the unborn human being  
 44 surviving to full-term birth based upon the presence of cardiac  
 45 activity, NOW, THEREFORE,

46  
 47 Be It Enacted by the Legislature of the State of Florida:

48  
 49 Section 1. Subsections (6), (7), (8), (9), (10), (11),  
 50 (12), and (13) of section 390.011, Florida Statutes, are

51 renumbered as subsections (7), (9), (10), (11), (12), (13),  
52 (14), and (16), respectively, present subsections (1), (6), (8),  
53 (11), and (13) are amended, and new subsections (6), (8), and  
54 (15) are added to that section, to read:

55 390.011 Definitions.—As used in this chapter, the term:

56 (1) "Abortion" means the termination of human pregnancy  
57 with an intention other than to produce a live birth or to  
58 remove a dead unborn human being fetus.

59 (6) "Fetal heartbeat" means cardiac activity or the steady  
60 and repetitive rhythmic contraction of the fetal heart within  
61 the gestational sac.

62 (7)-(6) "Gestation" means the development of a human embryo  
63 or an unborn human being fetus between fertilization and birth.

64 (8) "Gestational sac" means the structure that comprises  
65 the extraembryonic membranes that envelop the unborn human being  
66 and that is typically visible by ultrasound after the fourth  
67 week of pregnancy.

68 (10)-(8) "Partial-birth abortion" means a termination of  
69 pregnancy in which the physician performing the termination of  
70 pregnancy partially vaginally delivers a living unborn human  
71 being fetus before killing the unborn human being fetus and  
72 completing the delivery.

73 (13)-(11) "Standard medical measure" means the medical care  
74 that a physician would provide based on the particular facts of  
75 the pregnancy, the information available to the physician, and

76 the technology reasonably available in a hospital, as defined in  
77 s. 395.002, with an obstetrical department, to preserve the life  
78 and health of the unborn human being ~~fetus~~, with or without  
79 temporary artificial life-sustaining support, if the unborn  
80 human being ~~fetus~~ were born at the same stage of gestational  
81 ~~fetal~~ development.

82 (15) "Unborn human being" means an individual organism of  
83 the species Homo sapiens from fertilization until live birth.

84 (16)~~(13)~~ "Viable" or "viability" means the stage of ~~fetal~~  
85 development when the life of an unborn human being ~~a fetus~~ is  
86 sustainable outside the womb through standard medical measures.

87 Section 2. Paragraph (a) of subsection (3), subsections  
88 (4), (6), and (10), paragraph (a) of subsection (11), and  
89 paragraph (a) of subsection (15) of section 390.0111, Florida  
90 Statutes, are amended to read:

91 390.0111 Termination of pregnancies.—

92 (3) CONSENTS REQUIRED.—A termination of pregnancy may not  
93 be performed or induced except with the voluntary and informed  
94 written consent of the pregnant woman or, in the case of a  
95 mental incompetent, the voluntary and informed written consent  
96 of her court-appointed guardian.

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

99 1. The physician who is to perform the procedure, or the  
100 referring physician, has, at a minimum, orally, while physically

101 present in the same room, and at least 24 hours before the  
102 procedure, informed the woman of:

103 a. The nature and risks of undergoing or not undergoing  
104 the proposed procedure that a reasonable patient would consider  
105 material to making a knowing and willful decision of whether to  
106 terminate a pregnancy.

107 b. The probable gestational age of the unborn human being  
108 ~~fetus~~, verified by an ultrasound, at the time the termination of  
109 pregnancy is to be performed.

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

115 (II) The person performing the ultrasound must offer the  
116 woman the opportunity to view the live ultrasound images and  
117 hear an explanation of them. If the woman accepts the  
118 opportunity to view the images and hear the explanation, a  
119 physician or a registered nurse, licensed practical nurse,  
120 advanced practice registered nurse, or physician assistant  
121 working in conjunction with the physician must contemporaneously  
122 review and explain the images to the woman before the woman  
123 gives informed consent to having an abortion procedure  
124 performed.

125 (III) The woman has a right to decline to view and hear

126 | the explanation of the live ultrasound images after she is  
127 | informed of her right and offered an opportunity to view the  
128 | images and hear the explanation. If the woman declines, the  
129 | woman shall complete a form acknowledging that she was offered  
130 | an opportunity to view and hear the explanation of the images  
131 | but that she declined that opportunity. The form must also  
132 | indicate that the woman's decision was not based on any undue  
133 | influence from any person to discourage her from viewing the  
134 | images or hearing the explanation and that she declined of her  
135 | own free will.

136 |       (IV) Unless requested by the woman, the person performing  
137 | the ultrasound may not offer the opportunity to view the images  
138 | and hear the explanation and the explanation may not be given  
139 | if, at the time the woman schedules or arrives for her  
140 | appointment to obtain an abortion, a copy of a restraining  
141 | order, police report, medical record, or other court order or  
142 | documentation is presented which provides evidence that the  
143 | woman is obtaining the abortion because the woman is a victim of  
144 | rape, incest, domestic violence, or human trafficking or that  
145 | the woman has been diagnosed as having a condition that, on the  
146 | basis of a physician's good faith clinical judgment, would  
147 | create a serious risk of substantial and irreversible impairment  
148 | of a major bodily function if the woman delayed terminating her  
149 | pregnancy.

150 |       c. Whether the unborn human being has a detectable fetal

151 heartbeat. The physician who performs the examination for the  
152 presence of a fetal heartbeat must offer the woman the  
153 opportunity to view or hear the fetal heartbeat and present the  
154 statistical data regarding the probability of survival. If the  
155 woman declines, the woman shall complete a form acknowledging  
156 that she was offered an opportunity to view and hear the fetal  
157 heartbeat but that she declined that opportunity. The form must  
158 also indicate that the woman's decision was not based on any  
159 undue influence from any person to discourage her from viewing  
160 or hearing the fetal heartbeat and that she declined of her own  
161 free will.

162 d.e. The medical risks to the woman and the unborn human  
163 being fetus of carrying the pregnancy to term.

164  
165 The physician may provide the information required in this  
166 subparagraph within 24 hours before the procedure if requested  
167 by the woman at the time she schedules or arrives for her  
168 appointment to obtain an abortion and if she presents to the  
169 physician a copy of a restraining order, police report, medical  
170 record, or other court order or documentation evidencing that  
171 she is obtaining the abortion because she is a victim of rape,  
172 incest, domestic violence, or human trafficking.

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 unborn human being ~~fetus~~,  
 177 including a description of the various stages of development.

178 b. A list of entities 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 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD  
 192 TRIMESTER.—If a termination of pregnancy is performed in the  
 193 third trimester, the physician performing the termination of  
 194 pregnancy must exercise the same degree of professional skill,  
 195 care, and diligence to preserve the life and health of the  
 196 unborn human being ~~fetus~~ which the physician would be required  
 197 to exercise in order to preserve the life and health of an  
 198 unborn human being ~~a fetus~~ intended to be born and not aborted.  
 199 However, if preserving the life and health of the unborn human  
 200 being ~~fetus~~ conflicts with preserving the life and health of the



201 pregnant woman, the physician must consider preserving the  
 202 woman's life and health the overriding and superior concern.

203 (6) EXPERIMENTATION ON UNBORN HUMAN BEING ~~FETUS~~  
 204 PROHIBITED; EXCEPTION.—No person shall use any live unborn human  
 205 being ~~fetus~~ or live, premature infant for any type of  
 206 scientific, research, laboratory, or other kind of  
 207 experimentation either prior to or subsequent to any termination  
 208 of pregnancy procedure except as necessary to protect or  
 209 preserve the life and health of such unborn human being ~~fetus~~ or  
 210 premature infant.

211 (10) PENALTIES FOR VIOLATION.—Except as provided in  
 212 subsections (3), (7), and (12):

213 (a) Any person who willfully performs, or actively  
 214 participates in, a termination of pregnancy in violation of the  
 215 requirements of this section or s. 390.01112 commits a felony of  
 216 the third degree, punishable as provided in s. 775.082, s.  
 217 775.083, or s. 775.084.

218 (b) Any person who knowingly or purposefully performs or  
 219 induces an abortion on a pregnant woman with the specific intent  
 220 of causing or abetting the termination of the life of the unborn  
 221 human being whose fetal heartbeat has been detected pursuant to  
 222 sub-subparagraph (3)(a)1.c. commits a felony of the third  
 223 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 224 775.084.

225 (c) ~~(b)~~ Any person who performs, or actively participates

226 | in, a termination of pregnancy in violation of this section or  
 227 | s. 390.01112 which results in the death of the woman commits a  
 228 | felony of the second degree, punishable as provided in s.  
 229 | 775.082, s. 775.083, or s. 775.084.

230 | (11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;  
 231 | RELIEF.—

232 | (a) The father, if married to the mother at the time she  
 233 | receives a partial-birth abortion, and, if the mother has not  
 234 | attained the age of 18 years at the time she receives a partial-  
 235 | birth abortion, the maternal grandparents of the unborn human  
 236 | being ~~fetus~~ may, in a civil action, obtain appropriate relief,  
 237 | unless the pregnancy resulted from the plaintiff's criminal  
 238 | conduct or the plaintiff consented to the abortion.

239 | (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a  
 240 | local governmental entity, or a managed care plan providing  
 241 | services under part IV of chapter 409 may not expend funds for  
 242 | the benefit of, pay funds to, or initiate or renew a contract  
 243 | with an organization that owns, operates, or is affiliated with  
 244 | one or more clinics that are licensed under this chapter and  
 245 | perform abortions unless one or more of the following applies:

- 246 | (a) All abortions performed by such clinics are:
- 247 | 1. On unborn human beings ~~fetuses~~ that are conceived
  - 248 | through rape or incest; or
  - 249 | 2. Are medically necessary to preserve the life of the
  - 250 | pregnant woman or to avert a serious risk of substantial and

251 irreversible physical impairment of a major bodily function of  
 252 the pregnant woman, other than a psychological condition.

253 Section 3. Section 390.01112, Florida Statutes, is amended  
 254 to read:

255 390.01112 Termination of pregnancies during viability or  
 256 after fetal heartbeat is detected.—

257 (1) No termination of pregnancy shall be performed on any  
 258 woman ~~human being~~ if the physician determines that, in  
 259 reasonable medical judgment, the unborn human being ~~fetus~~ has  
 260 achieved viability or has a detectable fetal heartbeat, unless:

261 (a) Two physicians certify in writing that, in reasonable  
 262 medical judgment, the termination of the pregnancy is necessary  
 263 to save the pregnant woman's life or avert a serious risk of  
 264 substantial and irreversible physical impairment of a major  
 265 bodily function of the pregnant woman other than a psychological  
 266 condition; or

267 (b) The physician certifies in writing that, in reasonable  
 268 medical judgment, there is a medical necessity for legitimate  
 269 emergency medical procedures for termination of the pregnancy to  
 270 save the pregnant woman's life or avert a serious risk of  
 271 imminent substantial and irreversible physical impairment of a  
 272 major bodily function of the pregnant woman other than a  
 273 psychological condition, and another physician is not available  
 274 for consultation.

275 (2) Before performing a termination of pregnancy, a

276 physician must determine whether ~~if~~ the unborn human being:

277       (a) fetus Is viable by, at a minimum, performing a medical  
278 examination of the pregnant woman and, to the maximum extent  
279 possible through reasonably available tests and the ultrasound  
280 required under s. 390.0111(3), an examination of the unborn  
281 human being ~~fetus~~.

282       (b) Has a detectable fetal heartbeat.

283  
284 The physician must document in the pregnant woman's medical file  
285 the physician's determination and the method, equipment, ~~fetal~~  
286 measurements, and any other information used to determine the  
287 viability of the unborn human being and whether the unborn human  
288 being has a detectable fetal heartbeat ~~fetus~~.

289       (3) If a termination of pregnancy is performed during  
290 viability or after a fetal heartbeat has been detected, the  
291 physician performing the termination of pregnancy must exercise  
292 the same degree of professional skill, care, and diligence to  
293 preserve the life and health of the unborn human being ~~fetus~~  
294 that the physician would be required to exercise in order to  
295 preserve the life and health of an unborn human being ~~a fetus~~  
296 intended to be born and not aborted. However, if preserving the  
297 life and health of the unborn human being ~~fetus~~ conflicts with  
298 preserving the life and health of the woman, the physician must  
299 consider preserving the woman's life and health the overriding  
300 and superior concern.

301 Section 4. Paragraphs (d), (e), (f), and (h) of subsection  
302 (3), subsection (6), and subsection (7) of section 390.012,  
303 Florida Statutes, are amended to read:

304 390.012 Powers of agency; rules; disposal of ~~fetal~~  
305 remains.-

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

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

313 1. A medical history including reported allergies to  
314 medications, antiseptic solutions, or latex; past surgeries; and  
315 an obstetric and gynecological history.

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

318 3. The appropriate laboratory tests, including:

319 a. Urine or blood tests for pregnancy performed before the  
320 abortion procedure.

321 b. A test for anemia.

322 c. Rh typing, unless reliable written documentation of  
323 blood type is available.

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

325 4. An ultrasound evaluation for all patients. The rules

326 shall require that if a person who is not a physician performs  
327 an ultrasound examination, that person shall have documented  
328 evidence that he or she has completed a course in the operation  
329 of ultrasound equipment as prescribed in rule. The rules shall  
330 require clinics to be in compliance with s. 390.0111.

331 5. That the physician is responsible for estimating the  
332 gestational age of the unborn human being ~~fetus~~ based on the  
333 ultrasound examination and obstetric standards in keeping with  
334 established standards of care regarding the estimation of the  
335 gestational ~~fetal~~ age of the unborn human being as defined in  
336 rule and shall write the estimate in the patient's medical  
337 history. The physician shall keep original prints of each  
338 ultrasound examination of a patient in the patient's medical  
339 history file.

340 (e) Rules relating to the abortion procedure. At a  
341 minimum, these rules shall require:

342 1. That a physician, registered nurse, licensed practical  
343 nurse, advanced practice registered nurse, or physician  
344 assistant is available to all patients throughout the abortion  
345 procedure.

346 2. Standards for the safe conduct of abortion procedures  
347 that conform to obstetric standards in keeping with established  
348 standards of care regarding the estimation of the gestational  
349 ~~fetal~~ age of the unborn human being as defined in rule.

350 3. Appropriate use of general and local anesthesia,

351 analgesia, and sedation if ordered by the physician.

352 4. Appropriate precautions, such as the establishment of  
353 intravenous access at least for patients undergoing post-first  
354 trimester abortions.

355 5. Appropriate monitoring of the vital signs and other  
356 defined signs and markers of the patient's status throughout the  
357 abortion procedure and during the recovery period until the  
358 patient's condition is deemed to be stable in the recovery room.

359 (f) Rules that prescribe minimum recovery room standards.

360 At a minimum, these rules must require that:

361 1. Postprocedure recovery rooms be supervised and staffed  
362 to meet the patients' needs.

363 2. Immediate postprocedure care consist of observation in  
364 a supervised recovery room for as long as the patient's  
365 condition warrants.

366 3. A registered nurse, licensed practical nurse, advanced  
367 practice registered nurse, or physician assistant who is trained  
368 in the management of the recovery area and is capable of  
369 providing basic cardiopulmonary resuscitation and related  
370 emergency procedures remain on the premises of the abortion  
371 clinic until all patients are discharged.

372 4. A physician sign the discharge order and be readily  
373 accessible and available until the last patient is discharged to  
374 facilitate the transfer of emergency cases if hospitalization of  
375 the patient or the unborn human being ~~viable fetus~~ is necessary.

376           5. A physician discuss Rho(D) immune globulin with each  
377 patient for whom it is indicated and ensure that it is offered  
378 to the patient in the immediate postoperative period or will be  
379 available to her within 72 hours after completion of the  
380 abortion procedure. If the patient refuses the Rho(D) immune  
381 globulin, she and a witness must sign a refusal form approved by  
382 the agency which must be included in the medical record.

383           6. Written instructions with regard to postabortion  
384 coitus, signs of possible problems, and general aftercare which  
385 are specific to the patient be given to each patient. The  
386 instructions must include information regarding access to  
387 medical care for complications, including a telephone number for  
388 use in the event of a medical emergency.

389           7. A minimum length of time be specified, by type of  
390 abortion procedure and duration of gestation, during which a  
391 patient must remain in the recovery room.

392           8. The physician ensure that, with the patient's consent,  
393 a registered nurse, licensed practical nurse, advanced practice  
394 registered nurse, or physician assistant from the abortion  
395 clinic makes a good faith effort to contact the patient by  
396 telephone within 24 hours after surgery to assess the patient's  
397 recovery.

398           9. Equipment and services be readily accessible to provide  
399 appropriate emergency resuscitative and life support procedures  
400 pending the transfer of the patient or the unborn human being



401 ~~viable fetus~~ to the hospital.

402 (h) Rules to prescribe minimum abortion clinic incident  
403 reporting. At a minimum, these rules shall require that:

404 1. The abortion clinic records each incident that results  
405 in serious injury to a patient or an unborn human being ~~a viable~~  
406 ~~fetus~~ at an abortion clinic and shall report an incident in  
407 writing to the agency within 10 days after the incident occurs.  
408 For the purposes of this paragraph, "serious injury" means an  
409 injury that occurs at an abortion clinic and that creates a  
410 serious risk of substantial impairment of a major bodily organ.

411 2. If a patient's death occurs, other than the ~~a fetal~~  
412 death of an unborn human being properly reported pursuant to  
413 law, the abortion clinic reports it to the department not later  
414 than the next department workday.

415 (6) The agency may adopt and enforce rules, in the  
416 interest of protecting the public health, to ensure the prompt  
417 and proper disposal of ~~fetal~~ remains and tissue resulting from  
418 pregnancy termination.

419 (7) If an owner, operator, or employee of an abortion  
420 clinic fails to dispose of ~~fetal~~ remains and tissue in a  
421 sanitary manner pursuant to s. 381.0098, rules adopted  
422 thereunder, and rules adopted by the agency pursuant to this  
423 section, the license of such clinic may be suspended or revoked,  
424 and such person commits a misdemeanor of the first degree,  
425 punishable as provided in s. 775.082 or s. 775.083.

426 |           Section 5.   This act shall take effect July 1, 2019.           |