

1 A bill to be entitled
2 An act relating to assisted reproduction facilities;
3 creating s. 383.61, F.S.; defining terms; requiring a
4 donor to enter into a certain contract with a donor
5 bank or fertility clinic before he or she may donate;
6 providing requirements for the contract; requiring a
7 donor bank to clearly label each donation that is
8 transferred to a fertility clinic according to the
9 terms of each donor's contract; requiring a fertility
10 clinic to ensure that each donation received from a
11 donor or a donor bank is implanted, returned, or
12 disposed of according to the terms of the applicable
13 donor's contract; requiring donor banks and fertility
14 clinics to develop, by a specified date, a written
15 best practices policy for storing and segregating
16 sperm, eggs, and embryos; requiring the annual
17 submission of such written policies to the Department
18 of Health for review; creating a presumption of
19 recklessness against a physician at a fertility clinic
20 that does not have such a written policy; requiring
21 the department to perform annual inspections of donor
22 banks and fertility clinics without notice; requiring
23 the department to impose specified fines on donor
24 banks and fertility clinics for certain violations and
25 specified conduct; requiring such fines to be

26 deposited into the Rape Crisis Program Trust Fund;
 27 providing civil and criminal causes of action for,
 28 criminal penalties for, and disciplinary action
 29 against a physician who intentionally or recklessly
 30 artificially inseminates a patient with the incorrect
 31 sperm, eggs, or embryos; tolling applicable time
 32 limitations for civil actions, criminal prosecution,
 33 and disciplinary proceedings relating to certain
 34 violations until certain conditions are met; providing
 35 an effective date.

36

37 Be It Enacted by the Legislature of the State of Florida:

38

39 Section 1. Section 383.61, Florida Statutes, is created to
 40 read:

41 383.61 Assisted reproduction facilities.—

42 (1) DEFINITIONS.—As used in this section, the term:

43 (a) "Assisted reproductive technology" means all
 44 treatments or procedures that include the handling of human
 45 eggs, sperm, or embryos, including in vitro fertilization,
 46 gamete intrafallopian transfer, zygote intrafallopian transfer,
 47 and any other specific technology the department deems
 48 appropriate by rule.

49 (b) "Department" means the Department of Health.

50 (c) "Donation" means the giving of human sperm, eggs, or

51 embryos to a donor bank or fertility clinic for use in assisted
52 reproduction, regardless of whether for personal use or
53 compensation.

54 (d) "Donor" means a person who gives a donation.

55 (e) "Donor bank" means a facility that collects donations
56 from donors for use by a fertility clinic.

57 (f) "Fertility clinic" means a facility in which human
58 eggs are subject to assisted reproductive technology based on
59 manipulation of eggs or embryos that are subject to
60 implantation.

61 (g) "Incorrect insemination" means the implantation of
62 sperm, eggs, or embryos into a patient which is contrary to the
63 terms of the donor's contract.

64 (2) DONOR CONTRACTS.—

65 (a) A donor must enter into a contract with a donor bank
66 or fertility clinic before he or she may donate to that donor
67 bank or fertility clinic. The contract must, at a minimum,
68 indicate what must be done with the specimen if:

69 1. The donor dies or becomes incapacitated;

70 2. A designated recipient for the donation dies or becomes
71 incapacitated;

72 3. The donor and recipient separate or their marriage is
73 dissolved; and

74 4. The specimen is unused, including whether it may be
75 disposed of, offered to a different recipient, or donated to

76 science.

77 (b) A donor bank must ensure that each donation
78 transferred to a fertility clinic is clearly labeled according
79 to the terms of each donor's contract.

80 (c) A fertility clinic must ensure that each donation
81 received from a donor or a donor bank is implanted, returned, or
82 disposed of according to the terms of the applicable donor's
83 contract.

84 (3) BEST PRACTICES POLICIES.—

85 (a) By January 1, 2021, each donor bank and fertility
86 clinic in this state shall develop a written best practices
87 policy for storing and segregating sperm, eggs, and embryos to
88 ensure that the correct specimens are implanted in the correct
89 individuals and otherwise handled as directed by each donor's
90 contract with the donor bank or fertility clinic.

91 (b) The best practices policy must be submitted to the
92 department annually for review.

93 (c) Evidence that a fertility clinic does not have a
94 written best practices policy in place creates a presumption of
95 physician recklessness in a cause of action brought under this
96 section.

97 (4) INSPECTIONS.—The department shall perform annual
98 inspections of donor banks and fertility clinics without notice.

99 (5) FINES.—

100 (a) The department shall impose a fine of \$5,000 on a

101 donor bank for each failure to clearly label a donation or
102 otherwise comply with the terms of a donor's contract or this
103 section.

104 (b) The department shall impose a fine of up to \$20,000 on
105 a fertility clinic that fails to comply with the terms of a
106 donor's contract or this section.

107 (c) The department shall impose an administrative fine of
108 up to \$20,000 on a donor bank or a fertility clinic for each
109 violation of 42 U.S.C. part 263.

110 (d) Fines collected under this section shall be deposited
111 into the Rape Crisis Program Trust Fund established within the
112 department under s. 794.056.

113 (6) CAUSES OF ACTION.—A physician who intentionally or
114 recklessly implants the incorrect sperm, eggs, or embryos into a
115 patient:

116 (a) Is liable to that patient or a child born from such
117 assisted reproduction for all damages reasonably necessary to
118 compensate the patient or the child for any injuries suffered as
119 a result of the physician's intentional or reckless incorrect
120 insemination, including, but not limited to, emotional or mental
121 distress.

122 (b) Commits a felony of the third degree, punishable as
123 provided in s. 775.082, s. 775.083, or s. 775.084.

124 (c) Commits a sexual battery under s. 794.011, if the
125 incorrect insemination is of the physician's own biological

126 specimen.

127 (d) Is subject to disciplinary action under s.
128 456.072(1)(k), s. 458.331(1), or s. 459.015(1).

129 (7) TOLLING TIME LIMITATIONS.—

130 (a) The time limitations with respect to any civil action
131 that may be brought by, or on behalf of, a patient or a child
132 allegedly injured as a result of an incorrect insemination do
133 not begin to run until the patient discovers the violation.

134 (b) The applicable time limitations in s. 775.15 to
135 commence prosecution for a violation of subsection (6) do not
136 begin to run until the patient discovers the violation and
137 reports it to a law enforcement agency or other governmental
138 agency. Such law enforcement agency or other governmental agency
139 shall promptly report such allegation to the state attorney for
140 the judicial circuit in which the alleged violation occurred.

141 (c) The applicable time limitations in s. 456.073(13) to
142 file an administrative complaint against a licensee for a
143 violation of subsection (6) do not begin to run until the
144 patient discovers the violation and reports it to the department
145 or a law enforcement agency. Such law enforcement agency shall
146 promptly report such allegation to the department.

147 Section 2. This act shall take effect July 1, 2020.