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LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: WD   | . |       |
| 02/25/2020 | . |       |
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The Committee on Rules (Book) recommended the following:

1           **Senate Substitute for Amendment (362874) (with title**  
2 **amendment)**

3  
4           Delete lines 42 - 189

5 and insert:

6           (a) "Assisted reproductive technology" means those  
7 procreative procedures that involve the storage or laboratory  
8 handling of human eggs, preembryos, or sperm, including, but not  
9 limited to, in vitro fertilization embryo transfer, gamete  
10 intrafallopian transfer, pronuclear stage transfer, tubal embryo  
11 transfer, and zygote intrafallopian transfer.



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12           (b) "Commissioning party" means the intended parent or  
13 parents of a child who will be conceived by means of assisted  
14 reproductive technology.

15           (c) "Donor" means a person who donates reproductive  
16 material, regardless of whether for personal use or  
17 compensation.

18           (d) "Donor bank" means any facility that collects  
19 reproductive material from donors for use by a fertility clinic.

20           (e) "Egg" means the unfertilized female reproductive cell.

21           (f) "Fertility clinic" means a facility in which  
22 reproductive materials are subject to assisted reproductive  
23 technology for the purpose of being transferred into the body of  
24 a recipient.

25           (g) "Health care practitioner" has the same meaning as in  
26 s. 456.001.

27           (h) "Preembryo" means the product of fertilization of an  
28 egg by a sperm until the appearance of the embryonic axis.

29           (i) "Recipient" means a person who has a donor's  
30 reproductive material transferred into her body.

31           (j) "Reproductive material" means any human egg, preembryo,  
32 or sperm.

33           (k) "Reproductive storage facility" means a facility in  
34 which reproductive materials are stored until such time that  
35 they are transferred into the body of a recipient using assisted  
36 reproductive technology.

37           (l) "Sperm" means the male reproductive cell.

38           (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or  
39 donor must enter into a contract with the donor bank, fertility  
40 clinic, health care practitioner, or reproductive storage



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41 facility before he or she may make a donation of reproductive  
42 material. The contract must, at a minimum, indicate what must be  
43 done with the reproductive material if any of the following  
44 occurs:

45 1. The donor dies or becomes incapacitated.

46 2. A designated recipient for the donation dies or becomes  
47 incapacitated.

48 3. The commissioning party separates or the party's  
49 marriage is dissolved.

50 4. One member of the commissioning party dies or becomes  
51 incapacitated.

52 5. The reproductive material is unused, including whether  
53 it may be disposed of, offered to a different recipient, or  
54 donated to science.

55 6. Any other unforeseen circumstance.

56 (b) The donor bank, fertility clinic, health care  
57 practitioner, or reproductive storage facility must ensure that  
58 each donation is clearly labeled according to the terms of each  
59 donor or commissioning party's contract.

60 (c) The donor bank, fertility clinic, health care  
61 practitioner, or reproductive storage facility must ensure that  
62 the donation is transferred to a recipient, returned, disposed  
63 of, or stored according to the terms of the contract.

64 (3) BEST PRACTICE POLICIES.—

65 (a) By January 1, 2021, each donor bank, fertility clinic,  
66 health care practitioner, and reproductive storage facility that  
67 provides assisted reproductive technology in this state shall  
68 develop written best practice policies consistent with 42 U.S.C.  
69 s. 263a(f).



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70           (b) The best practice policies must be submitted to the  
71 appropriate licensing agency or department annually for review.

72           (c) All reproductive material stored by a donor bank,  
73 fertility clinic, health care practitioner, or reproductive  
74 storage facility must be clearly labeled.

75           (d) A donor bank, fertility clinic, health care  
76 practitioner, or reproductive storage facility must comply with  
77 the terms of the contract pursuant to subsection (2).

78           (e) A donor bank, fertility clinic, health care  
79 practitioner, or reproductive storage facility must maintain all  
80 records for at least 30 years.

81           (f) A health care practitioner may not transfer or  
82 inseminate a recipient or cause a recipient to have transferred  
83 into her body or be inseminated with the reproductive material  
84 of the health care practitioner.

85           Section 2. Paragraphs (pp) and (qq) are added to subsection  
86 (1) of section 456.072, Florida Statutes, to read:

87           456.072 Grounds for discipline; penalties; enforcement.—

88           (1) The following acts shall constitute grounds for which  
89 the disciplinary actions specified in subsection (2) may be  
90 taken:

91           (pp) Intentionally transferring into a recipient or  
92 inseminating a recipient with, or causing a recipient to have  
93 transferred into her body or be inseminated with, the  
94 reproductive material, as defined in s. 383.61, of a donor  
95 without the recipient's consent.

96           (qq) Violating s. 383.61.

97           Section 3. Subsection (1) of section 456.074, Florida  
98 Statutes, is amended to read:



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99 456.074 Certain health care practitioners; immediate  
100 suspension of license.—

101 (1) The department shall issue an emergency order  
102 suspending the license of any person licensed under chapter 458,  
103 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,  
104 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads  
105 guilty to, is convicted or found guilty of, or who enters a plea  
106 of nolo contendere to, regardless of adjudication, to:

107 (a) A felony under chapter 409, chapter 817, or chapter 893  
108 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;  
109 ~~or~~

110 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.  
111 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.  
112 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the  
113 Medicaid program; or

114 (c) A felony under s. 784.086, relating to a reproductive  
115 battery.

116 Section 4. Section 456.51, Florida Statutes, is created to  
117 read:

118 456.51 Health care practitioners; consent for pelvic  
119 examinations.—

120 (1) As used in this section, the term "pelvic examination"  
121 means the series of tasks that comprise an examination of the  
122 vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or  
123 external pelvic tissue or organs using any combination of  
124 modalities, which may include, but need not be limited to, the  
125 health care provider's gloved hand or instrumentation, in  
126 accordance with the prevailing professional standard of care for  
127 the health care practitioner as specified in s. 766.102.



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128       (2) A health care practitioner may not perform a pelvic  
129 examination on a patient without the written consent of the  
130 patient or the patient's legal representative executed specific  
131 to, and expressly identifying, the pelvic examination, unless:

132       (a) A court orders performance of the pelvic examination  
133 for the collection of evidence;

134       (b) The pelvic examination is immediately necessary to  
135 avert a serious risk of imminent, substantial, and irreversible  
136 physical impairment of a major bodily function of the patient;  
137 or

138       (c) The pelvic exam is indicated in the standard care for a  
139 procedure that the patient has consented to.

140       Section 5. Paragraphs (ww) and (xx) are added to subsection  
141 (1) of section 458.331, Florida Statutes, to read:

142       458.331 Grounds for disciplinary action; action by the  
143 board and department.—

144       (1) The following acts constitute grounds for denial of a  
145 license or disciplinary action, as specified in s. 456.072(2):

146       (ww) Intentionally transferring into a recipient or  
147 inseminating a recipient with, or causing a recipient to have  
148 transferred into her body or be inseminated with, the  
149 reproductive material, as defined in s. 383.61, of a donor  
150 without the recipient's consent.

151       (xx) Violating s. 383.61.

152       Section 6. Paragraphs (yy) and (zz) are added to subsection  
153 (1) of section 459.015, Florida Statutes, to read:

154       459.015 Grounds for disciplinary action; action by the  
155 board and department.—

156       (1) The following acts constitute grounds for denial of a



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157 license or disciplinary action, as specified in s. 456.072(2):  
158 (yy) Intentionally transferring into a recipient or  
159 inseminating a recipient with, or causing a recipient to have  
160 transferred into her body or be inseminated with, the  
161 reproductive material, as defined in s. 383.61, of a donor  
162 without the recipient's consent.

163 (zz) Violating s. 383.61.

164 Section 7. Section 784.086, Florida Statutes, is created to  
165 read:

166 784.086 Reproductive battery.—

167 (1) As used in this section, the term:

168 (a) "Donor" has the same meaning as in s. 383.61.

169 (b) "Health care practitioner" has the same meaning as in  
170 s. 456.001.

171 (c) "Recipient" has the same meaning as in s. 383.61.

172 (d) "Reproductive material" has the same meaning as in s.  
173 383.61.

174 (2) (a) A health care practitioner may not intentionally  
175 transfer into the body of a recipient the reproductive material  
176 of a donor or any object containing the reproductive material of  
177 a donor, knowing that the recipient has not consented to the use  
178 of the reproductive material from that donor. A health care  
179 practitioner who violates this paragraph commits a felony of the  
180 third degree, punishable as provided in s. 775.082, s. 775.083,  
181 or s. 775.084.

182 (b) If a recipient has requested the reproductive material  
183 of an anonymous donor, the health care practitioner may not  
184 donate the health care practitioner's reproductive material to  
185 the recipient, unless the recipient has provided written consent



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186 to the use of the reproductive material from that health care  
187 practitioner. A health care practitioner who violates this  
188 paragraph and is the donor of the reproductive material commits  
189 a felony of the second degree, punishable as provided in s.  
190 775.082, s. 775.083, or s. 775.084.

191

192

193 ===== T I T L E A M E N D M E N T =====

194 And the title is amended as follows:

195 Delete lines 5 - 30

196 and insert:

197 donor bank, fertility clinic, health care  
198 practitioner, or reproductive storage facility before  
199 donating reproductive material; providing requirements  
200 for the contract; requiring certain donor banks,  
201 fertility clinics, health care practitioners, and  
202 reproductive storage facilities to develop certain  
203 written best practice policies by a specified date;  
204 requiring the annual submission of such written  
205 policies to the appropriate licensing agency or the  
206 Department of Health; providing labeling, contract  
207 compliance, and record retention requirements;  
208 prohibiting a health care practitioner from implanting  
209 or inseminating a recipient with the health care  
210 practitioner's own reproductive material; amending s.  
211 456.072, F.S.; providing grounds for disciplinary  
212 action; amending s. 456.074, F.S.; requiring the  
213 department to immediately suspend the license of  
214 certain health care practitioners under certain





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215 circumstances; creating s. 456.51, F.S.; defining the  
216 term "pelvic examination"; prohibiting a health care  
217 practitioner from performing a pelvic examination on a  
218 patient without first obtaining the written consent of  
219 the patient or the patient's legal representative;  
220 providing exceptions; amending ss. 458.331 and  
221 459.015, F.S.; providing grounds for disciplinary  
222 action; creating s. 784.086, F.S.; defining terms;  
223 establishing the criminal offense of reproductive  
224 battery; providing an exception; providing criminal