

By Senator Book

32-00305A-20

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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      for review; creating a presumption of recklessness  
19      against a physician at a fertility clinic that does  
20      not have such a written policy; requiring the  
21      Department of Health to perform annual inspections of  
22      donor banks and fertility clinics without notice;  
23      requiring the department to impose specified fines on  
24      donor banks and fertility clinics for certain  
25      violations and specified conduct; requiring such fines  
26      to be deposited into the Rape Crisis Program Trust  
27      Fund; providing civil and criminal causes of action  
28      for, criminal penalties for, and disciplinary action  
29      against a physician who intentionally or recklessly

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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 treatments  
44 or procedures that include the handling of human eggs, sperm, or  
45 embryos, including in vitro fertilization, gamete intrafallopian  
46 transfer, zygote intrafallopian transfer, and any other specific  
47 technology the department deems appropriate by rule.

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

49           (c) "Donation" means the giving of human sperm, eggs, or  
50 embryos to a donor bank or fertility clinic for use in assisted  
51 reproduction, regardless of whether for personal use or  
52 compensation.

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

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

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

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59 implantation.

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

63 (2) DONOR CONTRACTS.—

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

68 1. The donor dies or becomes incapacitated;

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

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

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

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

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

83 (3) BEST PRACTICES POLICIES.—

84 (a) By January 1, 2021, each donor bank and fertility  
85 clinic in this state shall develop a written best practices  
86 policy for storing and segregating sperm, eggs, and embryos to  
87 ensure that the correct specimens are implanted in the correct

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88 individuals and otherwise handled as directed by each donor's  
89 contract with the donor bank or fertility clinic.

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

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

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

98 (5) FINES.—

99 (a) The department shall impose a fine of \$5,000 on a donor  
100 bank for each failure to clearly label a donation or otherwise  
101 comply with the terms of a donor's contract or this section.

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

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

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

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

114 (a) Is liable to that patient or a child born from such  
115 assisted reproduction for all damages reasonably necessary to  
116 compensate the patient or the child for any injuries suffered as

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117 a result of the physician's intentional or reckless incorrect  
118 insemination, including, but not limited to, emotional or mental  
119 distress.

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

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

125 (d) Is subject to disciplinary action under s.  
126 456.072(1)(k), s. 458.331(1), or s. 459.015(1).

127 (7) TOLLING TIME LIMITATIONS.—

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

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

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

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