

By the Committee on Criminal Justice; and Senators Book and Stewart

591-03834-20

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1 A bill to be entitled
2 An act relating to reproductive health; creating s.
3 383.61, F.S.; defining terms; requiring commissioning
4 parties and donors to enter into a contract with a
5 donor bank, fertility clinic, or health care
6 practitioner before donating reproductive material;
7 providing requirements for the contract; requiring
8 donor banks, fertility clinics, and health care
9 practitioners to develop certain written best practice
10 policies by a specified date; requiring the annual
11 submission of such written policies to the appropriate
12 licensing agency or the Department of Health;
13 providing labeling, contract compliance, and record
14 retention requirements; prohibiting a health care
15 practitioner from implanting or inseminating a
16 recipient with the health care practitioner's own
17 reproductive material; requiring the Agency for Health
18 Care Administration to conduct annual unannounced
19 inspections of donor banks and fertility clinics;
20 providing penalties; amending s. 456.072, F.S.;
21 providing grounds for disciplinary action; creating s.
22 456.51, F.S.; defining the term "pelvic examination";
23 prohibiting a health care practitioner from performing
24 a pelvic examination on a patient without first
25 obtaining the written consent of the patient or the
26 patient's legal representative; providing exceptions;
27 amending ss. 458.331 and 459.015, F.S.; providing
28 grounds for disciplinary action; creating s. 784.086,
29 F.S.; defining terms; establishing the criminal

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30 offense of reproductive battery; providing criminal
31 penalties; tolling the period of limitations;
32 providing that a recipient's consent to an anonymous
33 donor is not a defense to the crime of reproductive
34 battery; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

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

40 383.61 Assisted reproduction facilities.-

41 (1) DEFINITIONS.-As used in this section, the term:

42 (a) "Assisted reproductive technology" means those
43 procreative procedures that involve the laboratory handling of
44 human eggs, preembryos, or sperm, including, but not limited to,
45 in vitro fertilization embryo transfer, gamete intrafallopian
46 transfer, pronuclear stage transfer, tubal embryo transfer, and
47 zygote intrafallopian transfer.

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

51 (c) "Donor" means a person who donates reproductive
52 material, regardless of whether for personal use or
53 compensation.

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

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

57 (f) "Fertility clinic" means a facility in which
58 reproductive materials are subject to assisted reproductive

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59 technology for the purpose of implantation.

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

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

64 (i) "Recipient" means a person who receives, through
65 implantation, reproductive material from a donor.

66 (j) "Reproductive material" means any human egg, preembryo,
67 or sperm.

68 (k) "Sperm" means the male reproductive cell.

69 (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or
70 donor must enter into a contract with the donor bank, fertility
71 clinic, or health care practitioner before he or she may make a
72 donation of reproductive material. The contract must, at a
73 minimum, indicate what must be done with the reproductive
74 material if any of the following occurs:

75 1. The donor dies or becomes incapacitated.

76 2. A designated recipient for the donation dies or becomes
77 incapacitated.

78 3. The commissioning party separates or the party's
79 marriage is dissolved.

80 4. One member of the commissioning party dies or becomes
81 incapacitated.

82 5. The reproductive material is unused, including whether
83 it may be disposed of, offered to a different recipient, or
84 donated to science.

85 6. Any other unforeseen circumstance.

86 (b) The donor bank, fertility clinic, or health care
87 practitioner must ensure that each donation is clearly labeled

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88 according to the terms of each donor or commissioning party's
89 contract.

90 (c) The donor bank, fertility clinic, or health care
91 practitioner must ensure that the donation is implanted,
92 returned, disposed of, or stored according to the terms of the
93 contract.

94 (3) BEST PRACTICE POLICIES.—

95 (a) By January 1, 2021, each donor bank, fertility clinic,
96 and health care practitioner that provides assisted reproductive
97 technology in this state shall develop written best practice
98 policies consistent with 42 U.S.C. s. 263a(f).

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

101 (c) All reproductive material stored by a donor bank,
102 fertility clinic, or health care practitioner must be clearly
103 labeled.

104 (d) A donor bank, fertility clinic, or health care
105 practitioner must comply with the terms of the contract pursuant
106 to subsection (2).

107 (e) A donor bank, fertility clinic, or health care
108 practitioner must maintain all records for at least 30 years.

109 (f) A health care practitioner may not implant or
110 inseminate a recipient or cause a recipient to be implanted or
111 inseminated with reproductive material of the health care
112 practitioner.

113 (4) INSPECTIONS.—The Agency for Health Care Administration
114 shall perform annual inspections of donor banks and fertility
115 clinics without notice.

116 (5) PENALTIES.—A donor bank or fertility clinic in

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117 violation of subsections (2) or (3) is subject to penalties
118 provided in s. 400.995.

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

121 456.072 Grounds for discipline; penalties; enforcement.—

122 (1) The following acts shall constitute grounds for which
123 the disciplinary actions specified in subsection (2) may be
124 taken:

125 (pp) Intentionally implanting or inseminating a recipient
126 or causing a recipient to be implanted or inseminated with the
127 reproductive material, as defined in s. 383.61, of a donor
128 without the recipient's consent.

129 (qq) Violating s. 383.61.

130 Section 3. Section 456.51, Florida Statutes, is created to
131 read:

132 456.51 Health care practitioners; consent for pelvic
133 examinations.—

134 (1) As used in this section, the term "pelvic examination"
135 means the direct palpation of the organs of the female internal
136 reproductive system.

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

141 (a) A court orders performance of the pelvic examination
142 for the collection of evidence; or

143 (b) The pelvic examination is immediately necessary to
144 avert a serious risk of imminent, substantial, and irreversible
145 physical impairment of a major bodily function of the patient.

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146 Section 4. Paragraphs (ww) and (xx) are added to subsection
147 (1) of section 458.331, Florida Statutes, to read:

148 458.331 Grounds for disciplinary action; action by the
149 board and department.—

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

152 (ww) Intentionally implanting or inseminating a recipient
153 or causing a recipient to be implanted or inseminated with the
154 reproductive material, as defined in s. 383.61, of a donor
155 without the recipient's consent.

156 (xx) Violating s. 383.61.

157 Section 5. Paragraphs (yy) and (zz) are added to subsection
158 (1) of section 459.015, Florida Statutes, to read:

159 459.015 Grounds for disciplinary action; action by the
160 board and department.—

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

163 (yy) Intentionally implanting or inseminating a recipient
164 or causing a recipient to be implanted or inseminated with the
165 reproductive material, as defined in s. 383.61, of a donor
166 without the recipient's consent.

167 (zz) Violating s. 383.61.

168 Section 6. Section 784.086, Florida Statutes, is created to
169 read:

170 784.086 Reproductive battery.—

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

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

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

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

176 (d) "Reproductive material" has the same meaning as in s.
177 383.61.

178 (2) A health care practitioner may not intentionally
179 penetrate the vagina of a recipient with the reproductive
180 material of a donor or any object containing the reproductive
181 material of a donor, knowing the recipient has not consented to
182 the use of the reproductive material from that donor.

183 (a) A health care practitioner who violates this section
184 commits reproductive battery, a felony of the third degree,
185 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

186 (b) A health care practitioner who violates this section
187 and is the donor of the reproductive material commits a felony
188 of the second degree, punishable as provided in s. 775.082, s.
189 775.083, or s. 775.084.

190 (3) Notwithstanding any other law, the period of limitation
191 for a violation under this section does not begin to run until
192 the date on which the violation is discovered and reported to
193 law enforcement or any other governmental agency.

194 (4) It is not a defense to the crime of reproductive
195 battery that the recipient consented to an anonymous donor.

196 Section 7. This act shall take effect July 1, 2020.