

By the Committees on Rules; and Criminal Justice; and Senators Book and Stewart

595-04242-20

2020698c2

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, health care
6 practitioner, or reproductive storage facility before
7 donating reproductive material; providing requirements
8 for the contract; requiring certain donor banks,
9 fertility clinics, health care practitioners, and
10 reproductive storage facilities to develop certain
11 written best practice policies by a specified date;
12 requiring the annual submission of such written
13 policies to the appropriate licensing agency or the
14 Department of Health; providing labeling, contract
15 compliance, and record retention requirements;
16 prohibiting a health care practitioner from implanting
17 or inseminating a recipient with the health care
18 practitioner's own reproductive material; amending s.
19 456.072, F.S.; providing grounds for disciplinary
20 action; amending s. 456.074, F.S.; requiring the
21 department to immediately suspend the license of
22 certain health care practitioners under certain
23 circumstances; creating s. 456.51, F.S.; defining the
24 term "pelvic examination"; prohibiting a health care
25 practitioner from performing a pelvic examination on a
26 patient without first obtaining the written consent of
27 the patient or the patient's legal representative;
28 providing exceptions; amending ss. 458.331 and
29 459.015, F.S.; providing grounds for disciplinary

595-04242-20

2020698c2

30 action; creating s. 784.086, F.S.; defining terms;
31 establishing the criminal offense of reproductive
32 battery; providing criminal penalties; providing an
33 exception; tolling the period of limitations;
34 providing that a recipient's consent to an anonymous
35 donor is not a defense to the crime of reproductive
36 battery; providing an effective date.

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

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

42 383.61 Assisted reproduction facilities.—

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

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

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

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

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

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

595-04242-20

2020698c2

59 (f) "Fertility clinic" means a facility in which
60 reproductive materials are subject to assisted reproductive
61 technology for the purpose of being transferred into the body of
62 a recipient.

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

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

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

69 (j) "Reproductive material" means any human egg, preembryo,
70 or sperm.

71 (k) "Reproductive storage facility" means a facility in
72 which reproductive materials are stored until such time that
73 they are transferred into the body of a recipient using assisted
74 reproductive technology.

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

76 (2) CONTRACT REQUIREMENTS.—

77 (a) A commissioning party or donor must enter into a
78 contract with the donor bank, fertility clinic, health care
79 practitioner, or reproductive storage facility before he or she
80 may make a donation of reproductive material. The contract must,
81 at a minimum, indicate what must be done with the reproductive
82 material if any of the following occurs:

83 1. The donor dies or becomes incapacitated.

84 2. A designated recipient for the donation dies or becomes
85 incapacitated.

86 3. The commissioning party separates or the party's
87 marriage is dissolved.

595-04242-20

2020698c2

88 4. One member of the commissioning party dies or becomes
89 incapacitated.

90 5. The reproductive material is unused, including whether
91 it may be disposed of, offered to a different recipient, or
92 donated to science.

93 6. Any other unforeseen circumstance.

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

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

102 (3) BEST PRACTICE POLICIES.—

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

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

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

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

116 (e) A donor bank, fertility clinic, health care

595-04242-20

2020698c2

117 practitioner, or reproductive storage facility must maintain all
118 records for at least 30 years.

119 (f) A health care practitioner may not transfer or
120 inseminate a recipient or cause a recipient to have transferred
121 into her body or be inseminated with the reproductive material
122 of the health care practitioner.

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

125 456.072 Grounds for discipline; penalties; enforcement.—

126 (1) The following acts shall constitute grounds for which
127 the disciplinary actions specified in subsection (2) may be
128 taken:

129 (pp) Intentionally transferring into a recipient or
130 inseminating a recipient with, or causing a recipient to have
131 transferred into her body or be inseminated with, the
132 reproductive material, as defined in s. 383.61, of a donor
133 without the recipient's consent.

134 (qq) Violating s. 383.61.

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

137 456.074 Certain health care practitioners; immediate
138 suspension of license.—

139 (1) The department shall issue an emergency order
140 suspending the license of any person licensed under chapter 458,
141 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
142 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads
143 guilty to, is convicted or found guilty of, or who enters a plea
144 of nolo contendere to, regardless of adjudication, to:

145 (a) A felony under chapter 409, chapter 817, or chapter 893

595-04242-20

2020698c2

146 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;
147 ~~or~~

148 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.
149 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.
150 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the
151 Medicaid program; or

152 (c) A felony under s. 784.086, relating to a reproductive
153 battery.

154 Section 4. Section 456.51, Florida Statutes, is created to
155 read:

156 456.51 Health care practitioners; consent for pelvic
157 examinations.—

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

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

170 (a) A court orders performance of the pelvic examination
171 for the collection of evidence;

172 (b) The pelvic examination is immediately necessary to
173 avert a serious risk of imminent, substantial, and irreversible
174 physical impairment of a major bodily function of the patient;

595-04242-20

2020698c2

175 or

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

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

180 458.331 Grounds for disciplinary action; action by the
181 board and department.—

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

184 (ww) Intentionally transferring into a recipient or
185 inseminating a recipient with, or causing a recipient to have
186 transferred into her body or be inseminated with, the
187 reproductive material, as defined in s. 383.61, of a donor
188 without the recipient's consent.

189 (xx) Violating s. 383.61.

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

192 459.015 Grounds for disciplinary action; action by the
193 board and department.—

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

196 (yy) Intentionally transferring into a recipient or
197 inseminating a recipient with, or causing a recipient to have
198 transferred into her body or be inseminated with, the
199 reproductive material, as defined in s. 383.61, of a donor
200 without the recipient's consent.

201 (zz) Violating s. 383.61.

202 Section 7. Section 784.086, Florida Statutes, is created to
203 read:

595-04242-20

2020698c2

204 784.086 Reproductive battery.—

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

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

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

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

210 (d) "Reproductive material" has the same meaning as in s.
211 383.61.

212 (2) A health care practitioner may not intentionally
213 transfer into the body of a recipient the reproductive material
214 of a donor or any object containing the reproductive material of
215 a donor, knowing that the recipient has not consented to the use
216 of the reproductive material from that donor.

217 (a) A health care practitioner who violates this subsection
218 commits a felony of the third degree, punishable as provided in
219 s. 775.082, s. 775.083, or s. 775.084.

220 (b) A health care practitioner who violates this section
221 and is the donor of the reproductive material commits a felony
222 of the second degree, punishable as provided in s. 775.082, s.
223 775.083, or s. 775.084, unless the recipient has provided
224 written consent to the use of the health care practitioner's
225 reproductive material.

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

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

232 Section 8. This act shall take effect July 1, 2020.