

1 A bill to be entitled
2 An act relating to the final disposition of fetal
3 remains; amending s. 390.011, F.S.; revising
4 definitions; amending s. 390.0111, F.S.; requiring a
5 physician who is to perform or induce a surgical
6 abortion to inform a pregnant woman of her right to
7 determine the final disposition of fetal remains;
8 requiring that the pregnant woman be provided with a
9 notification form; requiring that the form be
10 completed for each zygote, blastocyte, embryo, or
11 fetus to be aborted; conforming provisions to changes
12 made by the act; creating s. 390.01119, F.S.;;
13 providing definitions; requiring that fetal remains
14 from a surgical abortion at an abortion clinic be
15 disposed of by cremation or interment; requiring that
16 the cremation of fetal remains occur in a crematory
17 facility; requiring that the pregnant woman be
18 provided with a notification form; providing
19 requirements for such form; requiring an abortion
20 clinic to determine the final disposition of fetal
21 remains if the pregnant woman decides to not make such
22 determination; requiring a pregnant woman who is a
23 minor to obtain consent from her parent or legal
24 guardian to make such determination; requiring a
25 pregnant woman to complete a form for each zygote,

26 | blastocyte, embryo, or fetus that will be aborted;
27 | prohibiting an abortion clinic from releasing fetal
28 | remains from a surgical abortion or arrange for the
29 | cremation or interment of such remains under certain
30 | conditions; requiring an abortion clinic to pay and
31 | provide for cremation or interment of fetal remains
32 | from a surgical abortion; requiring that the pregnant
33 | woman pay for the costs associated with final
34 | disposition of fetal remains under a certain
35 | condition; requiring an abortion clinic to document
36 | certain information in the pregnant woman's medical
37 | records; requiring an abortion clinic to maintain
38 | certain documentation regarding final disposition of
39 | fetal remains from surgical abortions performed or
40 | induced at the clinic; requiring an abortion clinic to
41 | develop and implement certain written policies and
42 | procedures; requiring an abortion clinic to develop
43 | and maintain a written list of locations at which it
44 | provides or arranges for final disposition of fetal
45 | remains; requiring the Department of Health to adopt
46 | rules by a specified date; requiring that such rules
47 | address certain forms; providing immunity from civil
48 | or criminal liability for certain persons under
49 | certain circumstances; providing that a pregnant woman
50 | who has a surgical abortion is not liable under

51 certain circumstances; providing penalties; providing
 52 certain prohibitions and requirements for operators of
 53 crematory facilities; providing for certain provisions
 54 of the act to prevail over any conflicting provisions
 55 of ch. 390, F.S.; amending s. 390.0112, F.S.; revising
 56 certain reporting requirements related to abortions;
 57 amending ss. 390.012, 497.383, and 873.05, F.S.;
 58 conforming provisions to changes made by the act;
 59 providing an effective date.

60

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

62

63 Section 1. Subsections (1), (6), and (11) of section
 64 390.011, Florida Statutes, are amended to read:

65 390.011 Definitions.—As used in this chapter, the term:

66 (1) "Abortion" means the termination of human pregnancy
 67 with an intention other than to produce a live birth or to
 68 remove a dead zygote, blastocyte, embryo, or fetus.

69 (6) "Gestation" means the development of a human zygote,
 70 blastocyte, embryo, or fetus between fertilization and birth.

71 (11) "Standard medical measure" means the medical care
 72 that a physician would provide based on the particular facts of
 73 the pregnancy, the information available to the physician, and
 74 the technology reasonably available in a hospital, as defined in
 75 s. 395.002, with an obstetrical department, to preserve the life

76 and health of the zygote, blastocyte, embryo, or fetus, with or
77 without temporary artificial life-sustaining support, if the
78 zygote, blastocyte, embryo, or fetus were born at the same stage
79 of fetal development.

80 Section 2. Paragraph (a) of subsection (3) and subsections
81 (6), (7), and (15) of section 390.0111, Florida Statutes, are
82 amended to read:

83 390.0111 Termination of pregnancies.—

84 (3) CONSENTS REQUIRED.—A termination of pregnancy may not
85 be performed or induced except with the voluntary and informed
86 written consent of the pregnant woman or, in the case of a
87 mental incompetent, the voluntary and informed written consent
88 of her court-appointed guardian.

89 (a) Except in the case of a medical emergency, consent to
90 a termination of pregnancy is voluntary and informed only if:

91 1. The physician who is to perform the procedure, or the
92 referring physician, has, at a minimum, orally, while physically
93 present in the same room, and at least 24 hours before the
94 procedure, informed the woman of:

95 a. The nature and risks of undergoing or not undergoing
96 the proposed procedure that a reasonable patient would consider
97 material to making a knowing and willful decision of whether to
98 terminate a pregnancy.

99 b. The probable gestational age of the zygote, blastocyte,
100 embryo, or fetus, verified by an ultrasound, at the time the

101 termination of pregnancy is to be performed.

102 (I) The ultrasound must be performed by the physician who
103 is to perform the abortion or by a person having documented
104 evidence that he or she has completed a course in the operation
105 of ultrasound equipment as prescribed by rule and who is working
106 in conjunction with the physician.

107 (II) The person performing the ultrasound must offer the
108 woman the opportunity to view the live ultrasound images and
109 hear an explanation of them. If the woman accepts the
110 opportunity to view the images and hear the explanation, a
111 physician or a registered nurse, licensed practical nurse,
112 advanced practice registered nurse, or physician assistant
113 working in conjunction with the physician must contemporaneously
114 review and explain the images to the woman before the woman
115 gives informed consent to having an abortion procedure
116 performed.

117 (III) The woman has a right to decline to view and hear
118 the explanation of the live ultrasound images after she is
119 informed of her right and offered an opportunity to view the
120 images and hear the explanation. If the woman declines, the
121 woman shall complete a form acknowledging that she was offered
122 an opportunity to view and hear the explanation of the images
123 but that she declined that opportunity. The form must also
124 indicate that the woman's decision was not based on any undue
125 influence from any person to discourage her from viewing the

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126 images or hearing the explanation and that she declined of her
127 own free will.

128 (IV) Unless requested by the woman, the person performing
129 the ultrasound may not offer the opportunity to view the images
130 and hear the explanation and the explanation may not be given
131 if, at the time the woman schedules or arrives for her
132 appointment to obtain an abortion, a copy of a restraining
133 order, police report, medical record, or other court order or
134 documentation is presented which provides evidence that the
135 woman is obtaining the abortion because the woman is a victim of
136 rape, incest, domestic violence, or human trafficking or that
137 the woman has been diagnosed as having a condition that, on the
138 basis of a physician's good faith clinical judgment, would
139 create a serious risk of substantial and irreversible impairment
140 of a major bodily function if the woman delayed terminating her
141 pregnancy.

142 c. The medical risks to the woman and the zygote,
143 blastocyte, embryo, or fetus of carrying the pregnancy to term.

144 d. If the abortion will be performed or induced
145 surgically, the pregnant woman's right to determine the final
146 disposition of fetal remains in accordance with s. 390.01119.
147 Notification forms as described in s. 390.01119(6) must be
148 provided to the pregnant woman for her to indicate whether she
149 chooses to determine the final disposition of fetal remains in
150 accordance with s. 390.01119. The notification forms must be

151 completed for each zygote, blastocyte, embryo, or fetus to be
152 aborted.

153

154 The physician may provide the information required in this
155 subparagraph within 24 hours before the procedure if requested
156 by the woman at the time she schedules or arrives for her
157 appointment to obtain an abortion and if she presents to the
158 physician a copy of a restraining order, police report, medical
159 record, or other court order or documentation evidencing that
160 she is obtaining the abortion because she is a victim of rape,
161 incest, domestic violence, or human trafficking.

162 2. Printed materials prepared and provided by the
163 department have been provided to the pregnant woman, if she
164 chooses to view these materials, including:

165 a. A description of the zygote, blastocyte, embryo, or
166 fetus, including a description of the various stages of
167 development.

168 b. A list of entities that offer alternatives to
169 terminating the pregnancy.

170 c. Detailed information on the availability of medical
171 assistance benefits for prenatal care, childbirth, and neonatal
172 care.

173 3. The woman acknowledges in writing, before the
174 termination of pregnancy, that the information required to be
175 provided under this subsection has been provided.

176
 177 Nothing in this paragraph is intended to prohibit a physician
 178 from providing any additional information which the physician
 179 deems material to the woman's informed decision to terminate her
 180 pregnancy.

181 (6) EXPERIMENTATION ON ZYGOTE, BLASTOCYTE, EMBRYO, OR
 182 FETUS PROHIBITED; EXCEPTION.—~~A~~ ~~No~~ person may not ~~shall~~ use any
 183 live zygote, blastocyte, embryo, or fetus or live, premature
 184 infant for any type of scientific, research, laboratory, or
 185 other kind of experimentation either before ~~prior to~~ or after
 186 ~~subsequent to~~ any termination of pregnancy procedure except as
 187 necessary to protect or preserve the life and health of such
 188 zygote, blastocyte, embryo, or fetus or premature infant.

189 (7) FINAL DISPOSITION OF FETAL REMAINS.—Fetal remains
 190 shall be humanely disposed of in accordance with s. 390.01119 ~~a~~
 191 ~~sanitary manner pursuant to s. 381.0098~~ and rules adopted
 192 thereunder. Failure to humanely dispose of fetal remains in
 193 accordance with s. 390.01119 ~~this subsection~~ is a misdemeanor of
 194 the first degree, punishable as provided in s. 775.082 or s.
 195 775.083.

196 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a
 197 local governmental entity, or a managed care plan providing
 198 services under part IV of chapter 409 may not expend funds for
 199 the benefit of, pay funds to, or initiate or renew a contract
 200 with an organization that owns, operates, or is affiliated with

201 one or more clinics that are licensed under this chapter and
 202 perform abortions unless one or more of the following applies:

203 (a) All abortions performed by such clinics are:

204 1. On zygotes, blastocytes, embryos, or fetuses that are
 205 conceived through rape or incest; or

206 2. Are medically necessary to preserve the life of the
 207 pregnant woman or to avert a serious risk of substantial and
 208 irreversible physical impairment of a major bodily function of
 209 the pregnant woman, other than a psychological condition.

210 Section 3. Section 390.01119, Florida Statutes, is created
 211 to read:

212 390.01119 Final disposition of fetal remains from surgical
 213 abortions.-

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

215 (a) "Cremation" has the same meaning as in s. 497.005.

216 (b) "Crematory facility" has the same meaning as the term
 217 "cinerator" as defined in s. 497.005.

218 (c) "Fetal remains" means the product of human conception
 219 that has been aborted. If a woman is carrying more than one
 220 zygote, blastocyte, embryo, or fetus, such as in the incidence
 221 of twins or triplets, each zygote, blastocyte, embryo, or fetus
 222 or any of its parts that is aborted is a separate product of
 223 human conception that has been aborted.

224 (d) "Interment" means the burial or entombment of fetal
 225 remains.

226 (e) "Surgical abortion" means a procedure that terminates
227 a pregnancy by removing the zygote, blastocyte, embryo, or fetus
228 and placenta from the pregnant woman's uterus by surgical means.

229 (2) Fetal remains from a surgical abortion at an abortion
230 clinic shall be disposed of by cremation or interment. The
231 cremation of fetal remains shall be in a crematory facility.

232 (3) A pregnant woman who has a surgical abortion has the
233 right to determine whether the final disposition of fetal
234 remains shall be by cremation or interment and the right to
235 choose the location for the final disposition.

236 (a) A pregnant woman who has a surgical abortion must be
237 provided with a notification form as described in paragraph
238 (6) (a). If a pregnant woman chooses to exercise the right to
239 determine the final disposition of fetal remains under this
240 subsection, she shall make such determination in writing using a
241 notification form prescribed by the department in accordance
242 with paragraph (6) (a). The written determination must clearly
243 indicate whether the final disposition will be by cremation or
244 interment and whether final disposition will be at a location
245 other than one provided by the abortion clinic.

246 (b) If a pregnant woman does not choose to exercise the
247 right to determine the final disposition of fetal remains under
248 this subsection, the abortion clinic must determine whether
249 final disposition of fetal remains shall be by cremation or
250 interment.

251 (c)1. A pregnant woman who is 17 years of age or younger,
252 unmarried, and unemancipated shall obtain consent from her
253 parent or legal guardian regarding her determination of the
254 final disposition of fetal remains. Such consent must be made in
255 writing using a form prescribed by the department.

256 2. Consent is not required for a pregnant woman who is 17
257 years of age or younger and exercising her right under this
258 section if a judicial waiver of the parental notice and consent
259 requirements is granted pursuant to s. 390.01114.

260 (d) A pregnant woman who is carrying more than one zygote,
261 blastocyte, embryo, or fetus, who chooses to make a
262 determination of the final disposition of fetal remains, shall
263 complete one notification form for each zygote, blastocyte,
264 embryo, or fetus that will be aborted. A pregnant woman who
265 obtains consent from her parent or legal guardian shall use one
266 consent form for each zygote, blastocyte, embryo, or fetus that
267 will be aborted. A form that covers more than one zygote,
268 blastocyte, embryo, or fetus that will be aborted is invalid.

269 (4) An abortion clinic may not release fetal remains from
270 a surgical abortion, or arrange for the cremation or interment
271 of such fetal remains, until it obtains a determination of the
272 final disposition of fetal remains, and if applicable, consent.

273 (5) (a) Except as provided in paragraph (b), an abortion
274 clinic shall pay for and provide for the cremation or interment
275 of the fetal remains from a surgical abortion performed or

276 induced at that clinic.

277 (b) If the determination of final disposition made by the
278 pregnant woman chooses a location for final disposition other
279 than one provided by the abortion clinic, the pregnant woman is
280 responsible for the costs associated with the final disposition
281 of the fetal remains at the chosen location.

282 (c) An abortion clinic shall document in the pregnant
283 woman's medical record the final disposition determination made
284 by the pregnant woman, and if applicable, whether consent was
285 obtained.

286 (d) An abortion clinic shall maintain evidentiary
287 documentation demonstrating the date and method of the final
288 disposition of fetal remains from surgical abortions performed
289 or induced at the clinic.

290 (e) An abortion clinic must develop and implement written
291 policies and procedures regarding cremation or interment of
292 fetal remains from surgical abortions performed or induced at
293 the clinic. An abortion clinic shall develop and maintain a
294 written list of locations at which it provides or arranges for
295 the final disposition of fetal remains from surgical abortions.

296 (6) By October 1, 2021, the department shall adopt rules
297 necessary to implement this section which must address all of
298 the following:

299 (a) The notification form informing pregnant women who
300 seek surgical abortions of the:

- 301 1. Right to determine the final disposition of fetal
302 remains.
- 303 2. Available options for locations and methods for the
304 disposition of fetal remains.
- 305 (b)1. A supplemental notification form which includes:
306 a. Whether the pregnant woman has indicated a preference
307 as to the:
- 308 (I) Method of disposition of the fetal remains and the
309 preferred method selected.
- 310 (II) Location of the disposition of the fetal remains.
311 b. The signature of the physician who is to perform or
312 induce the surgical abortion.
- 313 c. A medical identification number for the pregnant woman.
314 The pregnant woman's printed name or signature may not be
315 included.
- 316 2. If a medical emergency or medical necessity prevents
317 the pregnant woman from completing the supplemental notification
318 form, procedures to complete that form at a reasonable time
319 after the medical emergency or medical necessity has ended.
- 320 (7) A person who buries or cremates fetal remains from a
321 surgical abortion is not liable for or subject to damages in any
322 civil action, prosecution in any criminal proceeding, or
323 professional disciplinary action related to the disposal of
324 fetal remains, if such person:
- 325 (a) Acts in good faith compliance with this section;

326 (b) Receives a copy of a properly executed supplemental
327 notification form described in paragraph (6) (b); and

328 (c) Acts in furtherance of the final disposition of the
329 fetal remains.

330 (8) A pregnant woman who has a surgical abortion, the
331 fetal remains from which are not disposed of in compliance with
332 this section, is not guilty of committing, attempting to commit,
333 complicity in the commission of, or conspiracy in the commission
334 of a violation of this section.

335 (9) A person who knowingly violates this section by
336 failing to humanely dispose of fetal remains commits a
337 misdemeanor of the first degree, punishable as provided in s.
338 775.082 or s. 775.083.

339 (10) (a) An operator of a crematory facility that cremates
340 fetal remains for an abortion clinic may not:

341 1. Cremate fetal remains without receiving a copy of a
342 properly executed supplemental notification form as described
343 paragraph (6) (b);

344 2. Dispose of the cremated fetal remains by a means other
345 than one of the following:

346 a. Placing the remains in a grave, crypt, or niche;

347 b. Scattering them in any dignified manner, including in a
348 memorial garden, at sea, by air, or at a scattering garden; or

349 c. Any other manner in accordance with state law.

350 3. Arrange for the disposal of the cremated fetal remains

351 by a means other than one described in subparagraph 2.;

352 4. Arrange for the transfer of the cremated fetal remains
 353 for disposal by a means other than one described in subparagraph
 354 2.

355 (b) An operator of a crematory facility is not required to
 356 secure a fetal death certificate, a burial-transit permit as
 357 defined in s. 382.002, or a cremation authorization form to
 358 cremate fetal remains.

359 (11) The provisions of this section shall prevail over any
 360 conflicting provisions of this chapter.

361 Section 4. Paragraph (f) is added to subsection (1) of
 362 section 390.0112, Florida Statutes, to read:

363 390.0112 Termination of pregnancies; reporting.—

364 (1) The director of any medical facility in which
 365 abortions are performed, including a physician's office, shall
 366 submit a report each month to the agency. The report may be
 367 submitted electronically, may not include personal identifying
 368 information, and must include:

369 (f) If a surgical abortion was performed or induced, the
 370 method of final disposition of the fetal remains under s.
 371 390.01119.

372 Section 5. Paragraph (d) of subsection (3) and subsections
 373 (6) and (7) of section 390.012, Florida Statutes, are amended to
 374 read:

375 390.012 Powers of agency; rules; disposal of fetal

376 | remains.—

377 | (3) For clinics that perform or claim to perform abortions
378 | after the first trimester of pregnancy, the agency shall adopt
379 | rules pursuant to ss. 120.536(1) and 120.54 to implement the
380 | provisions of this chapter, including the following:

381 | (d) Rules relating to the medical screening and evaluation
382 | of each abortion clinic patient. At a minimum, these rules shall
383 | require:

384 | 1. A medical history including reported allergies to
385 | medications, antiseptic solutions, or latex; past surgeries; and
386 | an obstetric and gynecological history.

387 | 2. A physical examination, including a bimanual
388 | examination estimating uterine size and palpation of the adnexa.

389 | 3. The appropriate laboratory tests, including:

390 | a. Urine or blood tests for pregnancy performed before the
391 | abortion procedure.

392 | b. A test for anemia.

393 | c. Rh typing, unless reliable written documentation of
394 | blood type is available.

395 | d. Other tests as indicated from the physical examination.

396 | 4. An ultrasound evaluation for all patients. The rules
397 | shall require that if a person who is not a physician performs
398 | an ultrasound examination, that person shall have documented
399 | evidence that he or she has completed a course in the operation
400 | of ultrasound equipment as prescribed in rule. The rules shall

401 require clinics to be in compliance with s. 390.0111.

402 5. That the physician is responsible for estimating the
 403 gestational age of the zygote, blastocyte, embryo, or fetus
 404 based on the ultrasound examination and obstetric standards in
 405 keeping with established standards of care regarding the
 406 estimation of fetal age as defined in rule and shall write the
 407 estimate in the patient's medical history. The physician shall
 408 keep original prints of each ultrasound examination of a patient
 409 in the patient's medical history file.

410 (6) The agency may adopt and enforce rules, in the
 411 interest of protecting the public health, to ensure the humane
 412 ~~prompt and proper~~ disposal of fetal remains and ~~tissue~~ resulting
 413 from pregnancy termination in accordance with s. 390.01119.

414 (7) If an owner, operator, or employee of an abortion
 415 clinic fails to dispose of fetal remains and tissue in a humane
 416 ~~sanitary~~ manner pursuant to s. 390.01119 ~~s. 381.0098~~, rules
 417 adopted thereunder, and rules adopted by the agency pursuant to
 418 this section, the license of such clinic may be suspended or
 419 revoked, and such owner, operator, or employee ~~person~~ commits a
 420 misdemeanor of the first degree, punishable as provided in s.
 421 775.082 or s. 775.083.

422 Section 6. Subsection (1) of section 497.383, Florida
 423 Statutes, is amended to read:

424 497.383 Additional rights of legally authorized persons.-

425 (1) In addition to any other common law or statutory

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426 | rights a legally authorized person may otherwise have, such that
427 | person may authorize a funeral director or direct disposer
428 | licensed under this chapter to lawfully dispose of fetal remains
429 | in circumstances when a fetal death certificate is not issued
430 | under chapter 382, except as provided in s. 390.01119. A person
431 | licensed under this chapter or former chapter 470 is not liable
432 | for damages as a result of following the instructions of the
433 | legally authorized person in connection with the final
434 | disposition of fetal remains in circumstances in which a fetal
435 | death certificate is not issued under chapter 382 or in
436 | connection with the final disposition of a dead human body.

437 | Section 7. Subsection (2) of section 873.05, Florida
438 | Statutes, is amended to read:

439 | 873.05 Advertising, purchase, sale, or transfer of human
440 | embryos or fetal remains prohibited.—

441 | (2) A person may not advertise or offer to purchase, sell,
442 | donate, or transfer, or purchase, sell, donate, or transfer,
443 | fetal remains obtained from an abortion, as defined in s.
444 | 390.011. This subsection does not prohibit the transportation or
445 | transfer of fetal remains for disposal pursuant to s. 390.01119
446 | ~~s. 381.0098~~ or rules adopted thereunder.

447 | Section 8. This act shall take effect July 1, 2021.