

By Senator Baxley

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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.; defining
13 terms; requiring that fetal remains from a surgical
14 abortion at an abortion clinic be disposed of by
15 cremation or interment; requiring that the cremation
16 of fetal remains occurs in a crematory facility;
17 requiring that the pregnant woman be provided with a
18 notification form; providing requirements for such
19 form; requiring an abortion clinic to determine the
20 final disposition of fetal remains if the pregnant
21 woman decides not to make such determination;
22 requiring a pregnant woman who is a minor to obtain
23 consent from her parent or legal guardian to make such
24 determination; requiring a pregnant woman to complete
25 a form for each zygote, blastocyte, embryo, or fetus
26 that will be aborted; prohibiting an abortion clinic
27 from releasing fetal remains from a surgical abortion
28 or arrange for the cremation or interment of such
29 remains under certain conditions; requiring an

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30 abortion clinic to pay and provide for cremation or
31 interment of fetal remains from a surgical abortion;
32 requiring that the pregnant woman pay for the costs
33 associated with final disposition of fetal remains
34 under a certain condition; requiring an abortion
35 clinic to document certain information in the pregnant
36 woman's medical records; requiring an abortion clinic
37 to maintain certain documentation regarding final
38 disposition of fetal remains from surgical abortions
39 performed or induced at the clinic; requiring an
40 abortion clinic to develop and implement certain
41 written policies and procedures; requiring an abortion
42 clinic to develop and maintain a written list of
43 locations at which it provides or arranges for final
44 disposition of fetal remains; requiring the Department
45 of Health to adopt rules by a specified date;
46 requiring that such rules address certain forms;
47 providing immunity from civil or criminal liability
48 for certain persons under certain circumstances;
49 providing that a pregnant woman who has a surgical
50 abortion is not liable under certain circumstances;
51 providing penalties; providing certain prohibitions
52 and requirements for operators of crematory
53 facilities; providing for certain provisions of the
54 act to prevail over any conflicting provisions of ch.
55 390, 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;

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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 that
72 a physician would provide based on the particular facts of the
73 pregnancy, the information available to the physician, and the
74 technology reasonably available in a hospital, as defined in s.
75 395.002, 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

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88 of her court-appointed guardian.

89 (a) Except in the case of a medical emergency, consent to a
90 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 the
96 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.

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

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146 fetal remains in accordance with s. 390.01119. Notification
147 forms as described in s. 390.01119(6) must be provided to the
148 pregnant woman for her to indicate whether she chooses to
149 determine the final disposition of fetal remains in accordance
150 with s. 390.01119. The notification forms must be completed for
151 each zygote, blastocyte, embryo, or fetus to be aborted.

152

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

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

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

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

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

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

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

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

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

195 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a
196 local governmental entity, or a managed care plan providing
197 services under part IV of chapter 409 may not expend funds for
198 the benefit of, pay funds to, or initiate or renew a contract
199 with an organization that owns, operates, or is affiliated with
200 one or more clinics that are licensed under this chapter and
201 perform abortions unless one or more of the following applies:

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

203 1. On zygotes, blastocytes, embryos, or fetuses that are

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204 conceived through rape or incest; or

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

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

211 390.01119 Final disposition of fetal remains from surgical
212 abortions.-

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

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

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

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

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

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

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

231 (3) A pregnant woman who has a surgical abortion has the
232 right to determine whether the final disposition of fetal

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233 remains shall be by cremation or interment and the right to
234 choose the location for the final disposition.

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

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

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

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

259 (d) A pregnant woman who is carrying more than one zygote,
260 blastocyte, embryo, or fetus and who chooses to make a
261 determination of the final disposition of fetal remains must

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262 complete one notification form for each zygote, blastocyte,
263 embryo, or fetus that will be aborted. A pregnant woman who
264 obtains consent from her parent or legal guardian must use one
265 consent form for each zygote, blastocyte, embryo, or fetus that
266 will be aborted. A form that covers more than one zygote,
267 blastocyte, embryo, or fetus that will be aborted is invalid.

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

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

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

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

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

289 (e) An abortion clinic must develop and implement written
290 policies and procedures regarding cremation or interment of

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291 fetal remains from surgical abortions performed or induced at
292 the clinic. An abortion clinic shall develop and maintain a
293 written list of locations at which it provides or arranges for
294 the final disposition of fetal remains from surgical abortions.

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

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

300 1. Right to determine the final disposition of fetal
301 remains.

302 2. Available options for locations and methods for the
303 disposition of fetal remains.

304 (b)1. A supplemental notification form which includes:

305 a. Whether the pregnant woman has indicated a preference as
306 to the:

307 (I) Method of disposition of the fetal remains and the
308 preferred method selected.

309 (II) Location of the disposition of the fetal remains.

310 b. The signature of the physician who is to perform or
311 induce the surgical abortion.

312 c. A medical identification number for the pregnant woman.
313 The pregnant woman's printed name or signature may not be
314 included.

315 2. If a medical emergency or medical necessity prevents the
316 pregnant woman from completing the supplemental notification
317 form, procedures to complete that form at a reasonable time
318 after the medical emergency or medical necessity has ended.

319 (7) A person who buries or cremates fetal remains from a

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320 surgical abortion is not liable for or subject to damages in any
321 civil action, prosecution in any criminal proceeding, or
322 professional disciplinary action related to the disposal of
323 fetal remains if such person:

324 (a) Acts in good faith compliance with this section;

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

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

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

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

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

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

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

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

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

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

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349 3. Arrange for the disposal of the cremated fetal remains
 350 by a means other than one described in subparagraph 2.;

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

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

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

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

362 390.0112 Termination of pregnancies; reporting.-

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

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

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

374 390.012 Powers of agency; rules; disposal of fetal
 375 remains.-

376 (3) For clinics that perform or claim to perform abortions
 377 after the first trimester of pregnancy, the agency shall adopt

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378 rules pursuant to ss. 120.536(1) and 120.54 to implement the
379 provisions of this chapter, including the following:

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

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

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

388 3. The appropriate laboratory tests, including:

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

391 b. A test for anemia.

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

394 d. Other tests as indicated from the physical examination.

395 4. An ultrasound evaluation for all patients. The rules
396 shall require that if a person who is not a physician performs
397 an ultrasound examination, that person shall have documented
398 evidence that he or she has completed a course in the operation
399 of ultrasound equipment as prescribed in rule. The rules shall
400 require clinics to be in compliance with s. 390.0111.

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

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407 keep original prints of each ultrasound examination of a patient
408 in the patient's medical history file.

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

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

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

423 497.383 Additional rights of legally authorized persons.—

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

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

438 873.05 Advertising, purchase, sale, or transfer of human
439 embryos or fetal remains prohibited.-

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

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