

1 A bill to be entitled
2 An act relating to abortion; providing a short title;
3 amending s. 390.011, F.S.; providing and revising
4 definitions; amending s. 390.0111, F.S.; requiring a
5 physician to conduct a test for, and inform a woman
6 seeking an abortion of, the presence of a detectable
7 fetal heartbeat; amending s. 390.01112, F.S.;;
8 conforming provisions to changes made by the act;
9 creating s. 390.01113, F.S.; defining the term
10 "standard medical practice"; requiring a physician to
11 determine whether an unborn child has a detectable
12 fetal heartbeat before performing or inducing an
13 abortion; providing requirements for such
14 determination; requiring that the physician record
15 specified information in the pregnant woman's medical
16 record; prohibiting a physician from knowingly
17 performing or inducing an abortion if the physician
18 detects a fetal heartbeat for an unborn child or fails
19 to conduct a test to detect a fetal heartbeat;
20 providing exceptions; providing certain requirements
21 relating to documentation for physicians who believe a
22 medical emergency exists; providing for private civil
23 enforcement; prohibiting enforcement by certain
24 persons and entities; providing construction; creating
25 s. 390.01119, F.S.; requiring that a physician

26 maintain certain written documentation under certain
27 circumstances; requiring that such documentation
28 include specified information; amending s. 390.012,
29 F.S.; requiring that the Agency for Health Care
30 Administration adopt certain rules; creating s.
31 390.027, F.S.; providing for a civil cause of action
32 for violations of ch. 390, F.S., under certain
33 circumstances; providing for civil remedies and
34 damages; providing a certain exception; limiting the
35 period during which a cause of action may be brought;
36 providing venue; providing for an affirmative defense;
37 providing a burden of proof for such defense;
38 providing that a defendant does not have standing to
39 assert the rights of women seeking an abortion as a
40 defense; providing exceptions; providing that an
41 affirmative defense is not available under certain
42 circumstances; prohibiting a court from finding an
43 undue burden under certain circumstances; prohibiting
44 certain entities and persons from intervening in
45 certain civil actions; authorizing such entities and
46 persons to file amicus curiae briefs in such actions;
47 prohibiting the award of attorney fees or costs to a
48 defendant in certain civil actions; providing
49 construction; creating s. 390.028, F.S.; providing
50 that certain entities and persons are liable to pay

51 attorney fees and costs to the prevailing party in
52 actions challenging abortion laws; providing
53 construction for abortion laws; providing for
54 severability; providing that the state, a political
55 subdivision, and each officer and employee of the
56 state or a political subdivision have certain
57 immunities in any action challenging abortion laws;
58 providing construction; providing legislative intent;
59 providing requirements for severability; prohibiting a
60 court from declining to enforce the severability
61 requirements; requiring the Department of Health or
62 the Agency for Health Care Administration, as
63 applicable, to adopt rules enforcing such requirements
64 and issue notice of the rules within a specified
65 period under certain circumstances; authorizing a
66 person to petition for a writ of mandamus requiring
67 the department or agency, as applicable, to adopt
68 rules if either fails to adopt the rules and issue
69 notice; providing an effective date.

70
71 WHEREAS, a fetal heartbeat is a key medical predictor that
72 an unborn child will reach live birth, and

73 WHEREAS, cardiac activity begins at a biologically
74 identifiable moment in time, normally when the fetal heart is
75 formed in the gestational sac, and

76 WHEREAS, the State of Florida has a compelling interest
 77 from the outset of a woman's pregnancy in protecting the health
 78 of the woman and the life of the unborn child, and

79 WHEREAS, in order to make an informed choice about whether
 80 to continue her pregnancy, the pregnant woman has a compelling
 81 interest in knowing the likelihood of her unborn child surviving
 82 to full-term birth based upon the presence of cardiac activity,
 83 NOW, THEREFORE,

84

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

86

87 Section 1. This act may be cited as the "Florida Heartbeat
 88 Act."

89 Section 2. Section 390.011, Florida Statutes, is amended
 90 to read:

91 390.011 Definitions.—As used in this chapter, the term:

92 (1) "Abortion" means the termination of human pregnancy
 93 with an intention other than to produce a live birth or to
 94 remove a dead unborn child ~~fetus~~.

95 (2) "Abortion clinic" or "clinic" means any facility in
 96 which abortions are performed. The term does not include:

97 (a) A hospital; or

98 (b) A physician's office, provided that the office is not
 99 used primarily for the performance of abortions.

100 (3) "Agency" means the Agency for Health Care

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101 Administration.

102 (4) "Born alive" means the complete expulsion or
103 extraction from the mother of a human infant, at any stage of
104 development, who, after such expulsion or extraction, breathes
105 or has a beating heart, or definite and voluntary movement of
106 muscles, regardless of whether the umbilical cord has been cut
107 and regardless of whether the expulsion or extraction occurs as
108 a result of natural or induced labor, caesarean section, induced
109 abortion, or other method.

110 (5) "Department" means the Department of Health.

111 (6) "Fetal heartbeat" means cardiac activity or the steady
112 and repetitive rhythmic contraction of the fetal heart within
113 the gestational sac.

114 (7)-(6) "Gestation" means the development of a human embryo
115 or an unborn child fetus between fertilization and birth.

116 (8) "Gestational age" means the amount of time that has
117 elapsed from the first day of a woman's last menstrual period.

118 (9) "Gestational sac" means the structure that comprises
119 the extraembryonic membranes that envelop the unborn child and
120 that is typically visible by ultrasound after the fourth week of
121 pregnancy.

122 (10)-(7) "Hospital" means a facility as defined in s.
123 395.002(13) and licensed under chapter 395 and part II of
124 chapter 408.

125 (11)-(8) "Partial-birth abortion" means a termination of

126 pregnancy in which the physician performing the termination of
127 pregnancy partially vaginally delivers a living unborn child
128 ~~fetus~~ before killing the unborn child ~~fetus~~ and completing the
129 delivery.

130 (12)-(9) "Physician" means a physician licensed under
131 chapter 458 or chapter 459 or a physician practicing medicine or
132 osteopathic medicine in the employment of the United States.

133 (13) "Pregnancy" means the human female reproductive
134 condition that:

135 (a) Begins with fertilization.

136 (b) Occurs when the woman is carrying a developing human
137 offspring.

138 (c) Is calculated from the first day of the woman's last
139 menstrual period.

140 (14)-(10) "Reasonable medical judgment" means a medical
141 judgment that would be made by a reasonably prudent physician,
142 knowledgeable about the case and the treatment possibilities
143 with respect to the medical conditions involved.

144 (15)-(11) "Standard medical measure" means the medical care
145 that a physician would provide based on the particular facts of
146 the pregnancy, the information available to the physician, and
147 the technology reasonably available in a hospital, as defined in
148 s. 395.002, with an obstetrical department, to preserve the life
149 and health of the unborn child ~~fetus~~, with or without temporary
150 artificial life-sustaining support, if the unborn child ~~fetus~~

151 | were born at the same stage of gestational ~~fetal~~ development.

152 | ~~(16)-(12)~~ "Trimester" means one of the following three
 153 | distinct periods of time in the duration of a pregnancy:

154 | (a) "First trimester," which is the period of time from
 155 | fertilization through the end of the 11th week of gestation.

156 | (b) "Second trimester," which is the period of time from
 157 | the beginning of the 12th week of gestation through the end of
 158 | the 23rd week of gestation.

159 | (c) "Third trimester," which is the period of time from
 160 | the beginning of the 24th week of gestation through birth.

161 | (17) "Unborn child" means a human fetus or embryo in any
 162 | stage of gestation from fertilization until birth.

163 | ~~(18)-(13)~~ "Viable" or "viability" means the stage of ~~fetal~~
 164 | development when the life of an unborn child ~~a fetus~~ is
 165 | sustainable outside the womb through standard medical measures.

166 | Section 3. Paragraph (a) of subsection (3), subsections
 167 | (4), (6), and (7), paragraph (a) of subsection (11), and
 168 | paragraph (a) of subsection (15) of section 390.0111, Florida
 169 | Statutes, are amended to read:

170 | 390.0111 Termination of pregnancies.—

171 | (3) CONSENTS REQUIRED.—A termination of pregnancy may not
 172 | be performed or induced except with the voluntary and informed
 173 | written consent of the pregnant woman or, in the case of a
 174 | mental incompetent, the voluntary and informed written consent
 175 | of her court-appointed guardian.

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

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

182 a. The nature and risks of undergoing or not undergoing
183 the proposed procedure that a reasonable patient would consider
184 material to making a knowing and willful decision of whether to
185 terminate a pregnancy.

186 b. The probable gestational age of the unborn child ~~fetus~~,
187 verified by an ultrasound, at the time the termination of
188 pregnancy is to be performed.

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

194 (II) The person performing the ultrasound must offer the
195 woman the opportunity to view the live ultrasound images and
196 hear an explanation of them. If the woman accepts the
197 opportunity to view the images and hear the explanation, a
198 physician or a registered nurse, licensed practical nurse,
199 advanced practice registered nurse, or physician assistant
200 working in conjunction with the physician must contemporaneously

201 review and explain the images to the woman before the woman
202 gives informed consent to having an abortion procedure
203 performed.

204 (III) The woman has a right to decline to view and hear
205 the explanation of the live ultrasound images after she is
206 informed of her right and offered an opportunity to view the
207 images and hear the explanation. If the woman declines, the
208 woman shall complete a form acknowledging that she was offered
209 an opportunity to view and hear the explanation of the images
210 but that she declined that opportunity. The form must also
211 indicate that the woman's decision was not based on any undue
212 influence from any person to discourage her from viewing the
213 images or hearing the explanation and that she declined of her
214 own free will.

215 (IV) Unless requested by the woman, the person performing
216 the ultrasound may not offer the opportunity to view the images
217 and hear the explanation and the explanation may not be given
218 if, at the time the woman schedules or arrives for her
219 appointment to obtain an abortion, a copy of a restraining
220 order, police report, medical record, or other court order or
221 documentation is presented which provides evidence that the
222 woman is obtaining the abortion because the woman is a victim of
223 rape, incest, domestic violence, or human trafficking or that
224 the woman has been diagnosed as having a condition that, on the
225 basis of a physician's good faith clinical judgment, would

226 create a serious risk of substantial and irreversible impairment
227 of a major bodily function if the woman delayed terminating her
228 pregnancy.

229 c. Whether the unborn child has a detectable fetal
230 heartbeat. The physician who is to perform or induce the
231 abortion must also conduct a test for the presence of a fetal
232 heartbeat and inform the woman in writing of the statistical
233 probability of bringing the unborn child to term to the best of
234 the physician's knowledge, based on the gestational age of the
235 unborn child, or as prescribed by rule.

236 d.e. The medical risks to the woman and the unborn child
237 ~~fetus~~ of carrying the pregnancy to term.

238
239 The physician may provide the information required in this
240 subparagraph within 24 hours before the procedure if requested
241 by the woman at the time she schedules or arrives for her
242 appointment to obtain an abortion and if she presents to the
243 physician a copy of a restraining order, police report, medical
244 record, or other court order or documentation evidencing that
245 she is obtaining the abortion because she is a victim of rape,
246 incest, domestic violence, or human trafficking.

247 2. Printed materials prepared and provided by the
248 department have been provided to the pregnant woman, if she
249 chooses to view these materials, including:

250 a. A description of the unborn child ~~fetus~~, including a

251 description of the various stages of development.

252 b. A list of entities that offer alternatives to
253 terminating the pregnancy.

254 c. Detailed information on the availability of medical
255 assistance benefits for prenatal care, childbirth, and neonatal
256 care.

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

260
261 Nothing in this paragraph is intended to prohibit a physician
262 from providing any additional information which the physician
263 deems material to the woman's informed decision to terminate her
264 pregnancy.

265 (4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD
266 TRIMESTER.—If a termination of pregnancy is performed in the
267 third trimester, the physician performing the termination of
268 pregnancy must exercise the same degree of professional skill,
269 care, and diligence to preserve the life and health of the
270 unborn child ~~fetus~~ which the physician would be required to
271 exercise in order to preserve the life and health of an unborn
272 child ~~a fetus~~ intended to be born and not aborted. However, if
273 preserving the life and health of the unborn child ~~fetus~~
274 conflicts with preserving the life and health of the pregnant
275 woman, the physician must consider preserving the woman's life

276 and health the overriding and superior concern.

277 (6) EXPERIMENTATION ON UNBORN CHILD ~~FETUS~~ PROHIBITED;
 278 EXCEPTION.—~~A No~~ person may not shall use any live unborn child
 279 ~~fetus~~ or live, premature infant for any type of scientific,
 280 research, laboratory, or other kind of experimentation either
 281 before or after ~~prior to or subsequent to~~ any termination of
 282 pregnancy procedure except as necessary to protect or preserve
 283 the life and health of such unborn child ~~fetus~~ or premature
 284 infant.

285 (7) ~~FETAL~~ REMAINS OF AN UNBORN CHILD.—~~The Fetal~~ remains of
 286 an unborn child shall be disposed of in a sanitary manner
 287 pursuant to s. 381.0098 and rules adopted thereunder. Failure to
 288 dispose of such fetal remains in accordance with this subsection
 289 is a misdemeanor of the first degree, punishable as provided in
 290 s. 775.082 or s. 775.083.

291 (11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
 292 RELIEF.—

293 (a) The father, if married to the mother at the time she
 294 receives a partial-birth abortion, and, if the mother has not
 295 attained the age of 18 years at the time she receives a partial-
 296 birth abortion, the maternal grandparents of the unborn child
 297 ~~fetus~~ may, in a civil action, obtain appropriate relief, unless
 298 the pregnancy resulted from the plaintiff's criminal conduct or
 299 the plaintiff consented to the abortion.

300 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a

301 local governmental entity, or a managed care plan providing
 302 services under part IV of chapter 409 may not expend funds for
 303 the benefit of, pay funds to, or initiate or renew a contract
 304 with an organization that owns, operates, or is affiliated with
 305 one or more clinics that are licensed under this chapter and
 306 perform abortions unless one or more of the following applies:

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

308 1. On unborn children ~~fetuses~~ that are conceived through
 309 rape or incest; or

310 2. Are medically necessary to preserve the life of the
 311 pregnant woman or to avert a serious risk of substantial and
 312 irreversible physical impairment of a major bodily function of
 313 the pregnant woman, other than a psychological condition.

314 Section 4. Section 390.01112, Florida Statutes, is amended
 315 to read:

316 390.01112 Termination of pregnancies during viability.—

317 (1) A ~~No~~ termination of pregnancy may not ~~shall~~ be
 318 performed on any human being if the physician determines that,
 319 in reasonable medical judgment, the unborn child ~~fetus~~ has
 320 achieved viability, unless:

321 (a) Two physicians certify in writing that, in reasonable
 322 medical judgment, the termination of the pregnancy is necessary
 323 to save the pregnant woman's life or avert a serious risk of
 324 substantial and irreversible physical impairment of a major
 325 bodily function of the pregnant woman other than a psychological

326 condition; or

327 (b) The physician certifies in writing that, in reasonable
 328 medical judgment, there is a medical necessity for legitimate
 329 emergency medical procedures for termination of the pregnancy to
 330 save the pregnant woman's life or avert a serious risk of
 331 imminent substantial and irreversible physical impairment of a
 332 major bodily function of the pregnant woman other than a
 333 psychological condition, and another physician is not available
 334 for consultation.

335 (2) Before performing a termination of pregnancy, a
 336 physician must determine if the unborn child ~~fetus~~ is viable by,
 337 at a minimum, performing a medical examination of the pregnant
 338 woman and, to the maximum extent possible through reasonably
 339 available tests and the ultrasound required under s.

340 390.0111(3), an examination of the unborn child ~~fetus~~. The
 341 physician must document in the pregnant woman's medical file the
 342 physician's determination and the method, equipment, ~~fetal~~
 343 measurements of the unborn child, and any other information used
 344 to determine the viability of the unborn child ~~fetus~~.

345 (3) If a termination of pregnancy is performed during
 346 viability, the physician performing the termination of pregnancy
 347 must exercise the same degree of professional skill, care, and
 348 diligence to preserve the life and health of the unborn child
 349 ~~fetus~~ that the physician would be required to exercise in order
 350 to preserve the life and health of an unborn child ~~a fetus~~

351 intended to be born and not aborted. However, if preserving the
352 life and health of the unborn child ~~fetus~~ conflicts with
353 preserving the life and health of the woman, the physician must
354 consider preserving the woman's life and health the overriding
355 and superior concern.

356 Section 5. Section 390.01113, Florida Statutes, is created
357 to read:

358 390.01113 Termination of pregnancies after detection of
359 fetal heartbeat prohibited; exception; enforceability;
360 construction.-

361 (1) For the purposes of determining the presence of a
362 fetal heartbeat under this section, the term "standard medical
363 practice" means employing the appropriate means of detecting the
364 heartbeat based on the estimated gestational age of the unborn
365 child and the condition of the woman and her pregnancy.

366 (2) Except as provided in subsection (6), a physician may
367 not knowingly perform or induce an abortion on a pregnant woman
368 unless the physician has determined, in accordance with this
369 section, whether the woman's unborn child has a detectable fetal
370 heartbeat.

371 (3) In making a determination under this section, the
372 physician must use a test that is:

373 (a) Consistent with the physician's good faith and
374 reasonable understanding of standard medical practice.

375 (b) Appropriate for the estimated gestational age of the

376 unborn child and the condition of the woman and her pregnancy.

377 (4) A physician making a determination under this section
378 shall record all of the following in the pregnant woman's
379 medical record:

380 (a) Estimated gestational age of the unborn child.

381 (b) Method used to estimate the gestational age.

382 (c) Test used for detecting a fetal heartbeat, including
383 the date, time, and results of the test.

384 (5)(a) Except as provided in subsection (6), a physician
385 may not knowingly perform or induce an abortion on a pregnant
386 woman if the physician detected a fetal heartbeat for the unborn
387 child as required in this section or failed to conduct a test to
388 detect a fetal heartbeat.

389 (b) A physician does not violate this section if the
390 physician conducted a test for a fetal heartbeat and did not
391 detect a fetal heartbeat.

392 (c) This subsection does not affect:

393 1. The provisions of this chapter that restrict or
394 regulate an abortion by a particular method or during a
395 particular stage of pregnancy; or

396 2. Any other provision of general law that regulates or
397 prohibits abortion.

398 (6)(a) Subsection (5) does not apply if a physician
399 believes a medical emergency exists that prevents compliance
400 with this section.

401 (b) A physician who performs or induces an abortion when a
402 medical emergency exists shall make written notations in the
403 pregnant woman's medical record of all of the following:

404 1. The physician's belief that a medical emergency
405 necessitated the abortion.

406 2. The medical condition of the pregnant woman that
407 prevented compliance with this section.

408 (c) A physician performing or inducing an abortion under
409 the circumstances described in paragraph (a) shall maintain in
410 the physician's practice records a copy of the notations made
411 under paragraph (b).

412 (7)(a) The requirements of this section shall be enforced
413 exclusively through the private civil enforcement actions
414 provided in s. 390.027. Enforcement of the requirements of this
415 section in response to violations of such requirements may not
416 be taken or threatened by the state, a political subdivision, a
417 state attorney, or an executive or administrative officer or
418 employee of the state or a political subdivision against any
419 person, except as provided in s. 390.027.

420 (b) Paragraph (a) may not be construed to:

421 1. Legalize the conduct prohibited by this section;

422 2. Limit in any way or affect the availability of a remedy
423 established under s. 390.027; or

424 3. Limit the enforceability of any other laws that
425 regulate or prohibit abortion.

- 426 (8) This section may not be construed to:
 427 (a) Create or recognize a right to abortion before a fetal
 428 heartbeat is detected;
 429 (b) Authorize the initiation of a cause of action against
 430 or the prosecution of a woman on whom an abortion is performed
 431 or induced or attempted to be performed or induced in violation
 432 of this section;
 433 (c) Wholly or partly repeal, either expressly or by
 434 implication, any other provision of law that regulates or
 435 prohibits abortion; or
 436 (d) Restrict a political subdivision from regulating or
 437 prohibiting abortion in a manner that is at least as stringent
 438 as general law.

439 Section 6. Section 390.01119, Florida Statutes, is created
 440 to read:

441 390.01119 Medical emergencies; documentation required.—When
 442 an abortion is performed or induced on a pregnant woman because
 443 of a medical emergency under s. 390.01113(6), the physician who
 444 performs or induces the abortion shall certify in writing that
 445 the abortion is necessary due to a medical emergency and specify
 446 the woman's medical condition requiring the abortion.

447 (1) A physician who performs or induces an abortion on a
 448 pregnant woman shall:

449 (a) When the abortion is performed or induced to preserve
 450 the health of the pregnant woman, include all of the following

451 in a written document:

452 1. The specific medical condition the abortion is asserted
 453 to address.

454 2. The medical rationale for the physician's conclusion
 455 that the abortion is necessary to address the medical condition.

456 (b) For an abortion other than an abortion described in
 457 paragraph (a), specify in a written document that maternal
 458 health is not a purpose of the abortion.

459 (2) A physician shall place the written document required
 460 in this section in the pregnant woman's medical record and
 461 maintain a copy of the document in the physician's practice
 462 records.

463 Section 7. Section 390.012, Florida Statutes, is amended
 464 to read:

465 390.012 Powers of agency; rules; disposal of ~~fetal~~ remains
 466 of an unborn child.—

467 (1) The agency may develop and enforce rules pursuant to
 468 ss. 390.011-390.018 and part II of chapter 408 for the health,
 469 care, and treatment of persons in abortion clinics and for the
 470 safe operation of such clinics.

471 (a) The rules shall be reasonably related to the
 472 preservation of maternal health of the clients.

473 (b) The rules shall be in accordance with s. 797.03 and
 474 may not impose an unconstitutional burden on a woman's freedom
 475 to decide whether to terminate her pregnancy.

476 (c) The rules shall provide for:

477 1. The performance of pregnancy termination procedures
478 only by a licensed physician.

479 2. The making, protection, and preservation of patient
480 records, which shall be treated as medical records under chapter
481 458. When performing a license inspection of a clinic, the
482 agency shall inspect at least 50 percent of patient records
483 generated since the clinic's last license inspection.

484 3. Annual inspections by the agency of all clinics
485 licensed under this chapter to ensure that such clinics are in
486 compliance with this chapter and agency rules.

487 4. The prompt investigation of credible allegations of
488 abortions being performed at a clinic that is not licensed to
489 perform such procedures.

490 (2) For clinics that perform abortions in the first
491 trimester of pregnancy only, these rules must be comparable to
492 rules that apply to all surgical procedures requiring
493 approximately the same degree of skill and care as the
494 performance of first trimester abortions and must require:

495 (a) Clinics to have a written patient transfer agreement
496 with a hospital within reasonable proximity to the clinic which
497 includes the transfer of the patient's medical records held by
498 the clinic and the treating physician to the licensed hospital;
499 or

500 (b) Physicians who perform abortions at the clinic to have

501 admitting privileges at a hospital within reasonable proximity
 502 to the clinic.

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

507 (a) Rules for an abortion clinic's physical facilities. At
 508 a minimum, these rules shall prescribe standards for:

509 1. Adequate private space that is specifically designated
 510 for interviewing, counseling, and medical evaluations.

511 2. Dressing rooms for staff and patients.

512 3. Appropriate lavatory areas.

513 4. Areas for preprocedure hand washing.

514 5. Private procedure rooms.

515 6. Adequate lighting and ventilation for abortion
 516 procedures.

517 7. Surgical or gynecological examination tables and other
 518 fixed equipment.

519 8. Postprocedure recovery rooms that are equipped to meet
 520 the patients' needs.

521 9. Emergency exits to accommodate a stretcher or gurney.

522 10. Areas for cleaning and sterilizing instruments.

523 11. Adequate areas for the secure storage of medical
 524 records and necessary equipment and supplies.

525 12. The display in the abortion clinic, in a place that is

526 conspicuous to all patients, of the clinic's current license
527 issued by the agency.

528 (b) Rules to prescribe abortion clinic supplies and
529 equipment standards, including supplies and equipment that are
530 required to be immediately available for use or in an emergency.
531 At a minimum, these rules shall:

532 1. Prescribe required clean and sterilized equipment and
533 supplies, including medications, required for the conduct, in an
534 appropriate fashion, of any abortion procedure that the medical
535 staff of the clinic anticipates performing and for monitoring
536 the progress of each patient throughout the procedure and
537 recovery period.

538 2. Prescribe required equipment, supplies, and medications
539 that shall be available and ready for immediate use in an
540 emergency and requirements for written protocols and procedures
541 to be followed by staff in an emergency, such as the loss of
542 electrical power.

543 3. Prescribe equipment and supplies for required
544 laboratory tests and requirements for protocols to calibrate and
545 maintain laboratory equipment or equipment operated by clinic
546 staff at the abortion clinic.

547 4. Require ultrasound equipment.

548 5. Require that all equipment is safe for the patient and
549 the staff, meets applicable federal standards, and is checked
550 annually to ensure safety and appropriate calibration.

551 (c) Rules relating to abortion clinic personnel. At a
552 minimum, these rules shall require that:

553 1. The abortion clinic designate a medical director who is
554 licensed to practice medicine in this state, and all physicians
555 who perform abortions in the clinic have admitting privileges at
556 a hospital within reasonable proximity to the clinic, unless the
557 clinic has a written patient transfer agreement with a hospital
558 within reasonable proximity to the clinic which includes the
559 transfer of the patient's medical records held by both the
560 clinic and the treating physician.

561 2. If a physician is not present after an abortion is
562 performed, a registered nurse, licensed practical nurse,
563 advanced practice registered nurse, or physician assistant be
564 present and remain at the clinic to provide postoperative
565 monitoring and care until the patient is discharged.

566 3. Surgical assistants receive training in counseling,
567 patient advocacy, and the specific responsibilities associated
568 with the services the surgical assistants provide.

569 4. Volunteers receive training in the specific
570 responsibilities associated with the services the volunteers
571 provide, including counseling and patient advocacy as provided
572 in the rules adopted by the director for different types of
573 volunteers based on their responsibilities.

574 (d) Rules relating to the medical screening and evaluation
575 of each abortion clinic patient. At a minimum, these rules shall

576 require:

577 1. A medical history including reported allergies to
578 medications, antiseptic solutions, or latex; past surgeries; and
579 an obstetric and gynecological history.

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

582 3. The appropriate laboratory tests, including:

583 a. Urine or blood tests for pregnancy performed before the
584 abortion procedure.

585 b. A test for anemia.

586 c. Rh typing, unless reliable written documentation of
587 blood type is available.

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

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

595 5. That a ~~the~~ physician is responsible for estimating the
596 gestational age of the unborn child ~~fetus~~ based on the
597 ultrasound examination and obstetric standards in keeping with
598 established standards of care regarding the estimation of the
599 gestational ~~fetal~~ age of the unborn child as defined in rule and
600 shall write the estimate in the patient's medical history. The

601 physician shall keep original prints of each ultrasound
602 examination of a patient in the patient's medical history file.

603 6. That a physician is responsible for determining whether
604 an unborn child has a detectable fetal heartbeat by conducting a
605 test that is consistent with the physician's good faith and
606 reasonable understanding of standard medical practice and that
607 is appropriate for the estimated gestational age of the unborn
608 child as defined in rule and the condition of the woman and her
609 pregnancy.

610 (e) Rules relating to the abortion procedure. At a
611 minimum, these rules shall require:

612 1. That a physician, registered nurse, licensed practical
613 nurse, advanced practice registered nurse, or physician
614 assistant is available to all patients throughout the abortion
615 procedure.

616 2. Standards for the safe conduct of abortion procedures
617 that conform to obstetric standards in keeping with established
618 standards of care regarding the estimation of the gestational
619 ~~fetal~~ age of the unborn child as defined in rule.

620 3. Appropriate use of general and local anesthesia,
621 analgesia, and sedation if ordered by the physician.

622 4. Appropriate precautions, such as the establishment of
623 intravenous access at least for patients undergoing post-first
624 trimester abortions.

625 5. Appropriate monitoring of the vital signs and other

626 defined signs and markers of the patient's status throughout the
627 abortion procedure and during the recovery period until the
628 patient's condition is deemed to be stable in the recovery room.

629 (f) Rules that prescribe minimum recovery room standards.

630 At a minimum, these rules must require that:

631 1. Postprocedure recovery rooms be supervised and staffed
632 to meet the patients' needs.

633 2. Immediate postprocedure care consist of observation in
634 a supervised recovery room for as long as the patient's
635 condition warrants.

636 3. A registered nurse, licensed practical nurse, advanced
637 practice registered nurse, or physician assistant who is trained
638 in the management of the recovery area and is capable of
639 providing basic cardiopulmonary resuscitation and related
640 emergency procedures remain on the premises of the abortion
641 clinic until all patients are discharged.

642 4. A physician sign the discharge order and be readily
643 accessible and available until the last patient is discharged to
644 facilitate the transfer of emergency cases if hospitalization of
645 the patient or the unborn child ~~viable fetus~~ is necessary.

646 5. A physician discuss Rho(D) immune globulin with each
647 patient for whom it is indicated and ensure that it is offered
648 to the patient in the immediate postoperative period or will be
649 available to her within 72 hours after completion of the
650 abortion procedure. If the patient refuses the Rho(D) immune

651 globulin, she and a witness must sign a refusal form approved by
652 the agency which must be included in the medical record.

653 6. Written instructions with regard to postabortion
654 coitus, signs of possible problems, and general aftercare which
655 are specific to the patient be given to each patient. The
656 instructions must include information regarding access to
657 medical care for complications, including a telephone number for
658 use in the event of a medical emergency.

659 7. A minimum length of time be specified, by type of
660 abortion procedure and duration of gestation, during which a
661 patient must remain in the recovery room.

662 8. The physician ensure that, with the patient's consent,
663 a registered nurse, licensed practical nurse, advanced practice
664 registered nurse, or physician assistant from the abortion
665 clinic makes a good faith effort to contact the patient by
666 telephone within 24 hours after surgery to assess the patient's
667 recovery.

668 9. Equipment and services be readily accessible to provide
669 appropriate emergency resuscitative and life support procedures
670 pending the transfer of the patient or the unborn child ~~viable~~
671 ~~fetus~~ to the hospital.

672 (g) Rules that prescribe standards for followup care. At a
673 minimum, these rules shall require that:

674 1. A postabortion medical visit that includes a medical
675 examination and a review of the results of all laboratory tests

676 is offered.

677 2. A urine pregnancy test is obtained at the time of the
678 followup visit to rule out continuing pregnancy.

679 3. If a continuing pregnancy is suspected, the patient
680 shall be evaluated and a physician who performs abortions shall
681 be consulted.

682 (h) Rules to prescribe minimum abortion clinic incident
683 reporting. At a minimum, these rules shall require that:

684 1. The abortion clinic records each incident that results
685 in serious injury to a patient or an unborn child ~~a viable fetus~~
686 at an abortion clinic and shall report an incident in writing to
687 the agency within 10 days after the incident occurs. For the
688 purposes of this paragraph, "serious injury" means an injury
689 that occurs at an abortion clinic and that creates a serious
690 risk of substantial impairment of a major bodily organ.

691 2. If a patient's death occurs, other than the ~~a fetal~~
692 death of an unborn child properly reported pursuant to law, the
693 abortion clinic reports it to the department not later than the
694 next department workday.

695 (4) The rules adopted pursuant to this section shall not
696 limit the ability of a physician to advise a patient on any
697 health issue.

698 (5) The provisions of this section and the rules adopted
699 pursuant hereto shall be in addition to any other laws, rules,
700 and regulations which are applicable to facilities defined as

701 abortion clinics under this section.

702 (6) The agency may adopt and enforce rules, in the
703 interest of protecting the public health, to ensure the prompt
704 and proper disposal of ~~fetal~~ remains and tissue of an unborn
705 child resulting from pregnancy termination.

706 (7) If an owner, operator, or employee of an abortion
707 clinic fails to dispose of ~~fetal~~ remains and tissue of an unborn
708 child in a sanitary manner pursuant to s. 381.0098, rules
709 adopted thereunder, and rules adopted by the agency pursuant to
710 this section, the license of such clinic may be suspended or
711 revoked, and such person commits a misdemeanor of the first
712 degree, punishable as provided in s. 775.082 or s. 775.083.

713 (8) Beginning February 1, 2017, and annually thereafter,
714 the agency shall submit a report to the President of the Senate
715 and the Speaker of the House of Representatives which summarizes
716 all regulatory actions taken during the prior year by the agency
717 under this chapter.

718 Section 8. Section 390.027, Florida Statutes, is created
719 to read:

720 390.027 Civil liability for violation or aiding or
721 abetting violation.-

722 (1) A person, other than an officer or employee of a state
723 or local governmental entity, may bring a civil action against a
724 person who:

725 (a) Performs or induces an abortion in violation of this

726 chapter; or

727 (b) Knowingly engages in conduct that aids or abets the
 728 performance or inducement of an abortion, including, but not
 729 limited to, paying for or reimbursing the costs of an abortion
 730 through insurance or otherwise, if the abortion is performed or
 731 induced in violation of this chapter, regardless of whether the
 732 person knew or should have known that the abortion would be
 733 performed or induced in violation of this chapter.

734 (2) If a claimant prevails in an action brought under this
 735 section, the court shall award all of the following:

736 (a) Injunctive relief sufficient to prevent the defendant
 737 from violating this chapter or engaging in acts that aid or abet
 738 violations of this chapter.

739 (b) Damages in an amount of at least \$10,000 for each
 740 abortion that the defendant performed or induced in violation of
 741 this chapter, and for each abortion performed or induced in
 742 violation of this chapter which the defendant aided or abetted.

743 (c) Attorney fees and costs.

744 (3) Notwithstanding subsection (2), a court may not award
 745 relief under this section if a defendant demonstrates that the
 746 defendant paid damages in a previous action for that particular
 747 abortion performed or induced in violation of this chapter, or
 748 for the particular conduct that aided or abetted an abortion
 749 performed or induced in violation of this chapter.

750 (4) A person may bring an action under this section within

751 6 years after the cause of action has accrued.

752 (5) Notwithstanding any other law, a civil action brought
 753 under this section shall be brought in:

754 (a) The county in which all or a substantial part of the
 755 events or omissions giving rise to the claim occurred;

756 (b) The county of residence for any one of the defendants
 757 at the time the cause of action accrued;

758 (c) The county of the principal office in the state of any
 759 one of the defendants that is not a natural person; or

760 (d) The county of residence for the claimant if the
 761 claimant is a natural person residing in the state.

762 (6) Notwithstanding any other law, the following are not a
 763 defense to an action brought under this section:

764 (a) Ignorance or mistake of law.

765 (b) A defendant's belief that the requirements of this
 766 chapter are unconstitutional or were unconstitutional.

767 (c) A defendant's reliance on any court decision that has
 768 been overruled on appeal or by a subsequent court, even if that
 769 court decision had not been overruled when the defendant engaged
 770 in conduct that violated this chapter.

771 (d) A defendant's reliance on a state or federal court
 772 decision that is not binding on the court in which the action
 773 has been brought.

774 (e) Nonmutual issue preclusion or nonmutual claim
 775 preclusion.

776 (f) The consent of the unborn child's mother to the
 777 abortion.

778 (g) Except as provided in subsection (8), a claim that the
 779 enforcement of this chapter or the imposition of civil liability
 780 against the defendant will violate the constitutional rights of
 781 third parties.

782 (7) It is an affirmative defense if a person sued under
 783 paragraph (1)(b) reasonably believed, after conducting a
 784 reasonable investigation, that the physician who performed or
 785 induced the abortion had complied or would comply with this
 786 chapter. The defendant has the burden of proving the affirmative
 787 defense by a preponderance of the evidence.

788 (8)(a) A defendant against whom an action is brought under
 789 this section only has standing to assert the rights of women
 790 seeking an abortion as a defense to liability if:

791 1. The United States Supreme Court holds that the state
 792 courts must confer standing on that defendant to assert the
 793 third-party rights of women seeking an abortion in state court
 794 as a matter of federal constitutional law; or

795 2. The defendant is an abortion provider, an employee of
 796 an abortion provider, or a physician who performs abortions.

797 (b)1. A defendant in an action brought under this section
 798 may assert an affirmative defense to liability only if all of
 799 the following apply:

800 a. The defendant has standing to assert the third-party

801 rights of women seeking abortions in accordance with paragraph
802 (a).

803 b. The defendant demonstrates that the relief sought by
804 the claimant will impose an undue burden on women seeking an
805 abortion.

806 2. The affirmative defense is not available if the United
807 States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973)
808 or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless
809 of whether the conduct on which the cause of action is based
810 occurred before the United States Supreme Court overruled either
811 of those decisions.

812 (c) A court may only find an undue burden under paragraph
813 (b) if the defendant introduces evidence proving that:

814 1. An award of relief will prevent an identifiable woman
815 or an identifiable group of women from obtaining an abortion; or

816 2. An award of relief will place a substantial obstacle in
817 the path of an identifiable woman or an identifiable group of
818 women who are seeking an abortion.

819 (d) A defendant may not establish an undue burden under
820 this subsection by:

821 1. Merely demonstrating that an award of relief will
822 prevent women from obtaining support or assistance, financial or
823 otherwise, from others in their effort to obtain an abortion; or

824 2. Arguing or attempting to demonstrate that an award of
825 relief against other defendants or other potential defendants

826 will impose an undue burden on women seeking an abortion.

827 (9) Notwithstanding any other law, the state, a state
828 official, or a state attorney may not intervene in an action
829 brought under this section. However, the state, a state
830 official, or a state attorney is not prohibited from filing an
831 amicus curiae brief in such action.

832 (10) Notwithstanding any other law, a court may not award
833 attorney fees or costs under the Florida Rules of Civil
834 Procedure or any other rule adopted by the Supreme Court to a
835 defendant in an action brought under this section.

836 (11) This section may not be construed to impose liability
837 on any speech or conduct protected by the First Amendment of the
838 United States Constitution, as made applicable to the states
839 through the United States Supreme Court's interpretation of the
840 Fourteenth Amendment of the United States Constitution, or by s.
841 4, Art. I of the State Constitution.

842 Section 9. Section 390.028, Florida Statutes, is created
843 to read:

844 390.028 Award of attorney fees in actions challenging
845 abortion laws.—

846 (1) Notwithstanding any other law, a person, including an
847 entity, an attorney, or a law firm, who seeks declaratory or
848 injunctive relief to prevent the state, a political subdivision
849 thereof, or a governmental entity or public official in the
850 state from enforcing any statute, ordinance, rule, regulation,

851 or any other type of law that regulates or restricts abortion or
852 that limits taxpayer funding for individuals or entities that
853 perform or promote abortions, in any state or federal court, or
854 that represents any litigant seeking such relief in a state or
855 federal court, is jointly and severally liable to pay the
856 attorney fees and costs of the prevailing party.

857 (2) For purposes of this section, a party is considered a
858 prevailing party if a state or federal court:

859 (a) Dismisses any claim or cause of action brought against
860 the party which seeks the declaratory or injunctive relief
861 described in subsection (1), regardless of the reason for the
862 dismissal; or

863 (b) Enters judgment in the party's favor on any such claim
864 or cause of action.

865 (3) Regardless of whether a prevailing party sought to
866 recover attorney fees or costs in the underlying action, a
867 prevailing party under this section may bring a civil action to
868 recover attorney fees or costs against a person, including an
869 entity, an attorney, or a law firm, which sought declaratory or
870 injunctive relief described in subsection (1) within 3 years
871 after the date on which, as applicable:

872 (a) The dismissal or judgment described in subsection (2)
873 becomes final on the conclusion of appellate review; or

874 (b) The time for seeking appellate review expires.

875 (4) It is not a defense to an action brought under

876 subsection (3) that:

877 (a) A prevailing party under this section failed to seek
878 recovery of attorney fees or costs in the underlying action; or

879 (b) The court in the underlying action declined to
880 recognize or enforce the requirements of this section.

881 Section 10. (1) Any law that regulates or prohibits
882 abortion may not be construed to repeal any other law that
883 regulates or prohibits abortion, either wholly or partly, unless
884 the repealing law explicitly states that it is repealing the
885 other law.

886 (2) A law may not be construed to restrict a political
887 subdivision from regulating or prohibiting abortion in a manner
888 that is at least as stringent as general law unless the law
889 explicitly states that political subdivisions are prohibited
890 from regulating or prohibiting abortion in the manner described
891 by general law.

892 (3) Every law that regulates or prohibits abortion is
893 severable in each of its applications to every person and
894 circumstance. If any law that regulates or prohibits abortion is
895 found by any court to be unconstitutional, either on its face or
896 as applied, all applications of that law that do not violate the
897 constitutional rights of women seeking abortions shall be
898 severed from the unconstitutional applications and shall remain
899 enforceable, notwithstanding any other law.

900 Section 11. (1) The state has sovereign immunity, each

901 political subdivision thereof has governmental immunity, and
902 each officer and employee of the state or a political
903 subdivision has official immunity in any action, claim, or
904 counterclaim or any type of legal or equitable action that
905 challenges the validity of any provision or application of this
906 act, on constitutional grounds or otherwise.

907 (2) A provision of general law may not be construed to
908 waive or abrogate an immunity described in subsection (1) unless
909 it expressly waives immunity under this section.

910 (3) This section prevails over any conflicting law.

911 Section 12. (1) In light of *Leavitt v. Jane L.*, 518 U.S.
912 137 (1996), in which in the context of determining the
913 severability of a state statute regulating abortion, the United
914 States Supreme Court held that an explicit statement of
915 legislative intent is controlling, it is the intent of the
916 Legislature that every provision, section, subsection, sentence,
917 clause, phrase, or word in this act, and every application of
918 the provisions in this act, are severable from each other.

919 (2) If any application of any provision in this act to any
920 person, group of persons, or circumstances is found by a court
921 to be invalid or unconstitutional, the remaining applications of
922 that provision to all other persons and circumstances shall be
923 severed and may not be affected. All constitutionally valid
924 applications of this act shall be severed from any applications
925 that a court finds to be invalid, leaving the valid applications

926 in force, because it is the Legislature's intent and priority
927 that the valid applications be allowed to stand alone. Even if a
928 reviewing court finds a provision of this act to impose an undue
929 burden in a large or substantial fraction of relevant cases, the
930 applications that do not present an undue burden shall be
931 severed from the remaining provisions and shall remain in force,
932 and shall be treated as if the Legislature had enacted a statute
933 limited to the persons, group of persons, or circumstances for
934 which the statute's application does not present an undue
935 burden.

936 (3) The Legislature further declares that it would have
937 enacted this act, and each provision, section, subsection,
938 sentence, clause, phrase, or word, and all constitutional
939 applications of this act, irrespective of the fact that any
940 provision, section, subsection, sentence, clause, phrase, or
941 word, or applications of this act, were to be declared
942 unconstitutional or to represent an undue burden.

943 (4) If any provision of this act is found by any court to
944 be unconstitutionally vague, then the applications of that
945 provision that do not present constitutional vagueness problems
946 shall be severed and remain in force.

947 (5) A court may not decline to enforce the severability
948 requirements of subsections (1) through (4) on the ground that
949 severance would rewrite the statute or involve the court in
950 legislative or lawmaking activity. A court that declines to

951 enforce or enjoins a state official from enforcing a statutory
952 provision does not rewrite a statute, as the statute continues
953 to contain the same words as before the court's decision. A
954 judicial injunction or declaration of unconstitutionality:

955 (a) Is nothing more than an edict prohibiting enforcement
956 that may subsequently be vacated by a later court if that court
957 has a different understanding of the requirements of the State
958 Constitution or the United States Constitution;

959 (b) Is not a formal amendment of the language in a
960 statute; and

961 (c) No more rewrites a statute than a decision by the
962 executive not to enforce a duly enacted statute in a limited and
963 defined set of circumstances.

964 (6) If any federal or state court declares
965 unconstitutional or enjoins the enforcement of a provision in
966 this act and fails to enforce the severability requirements of
967 subsections (1) through (5), the department or agency, as
968 applicable, shall:

969 (a) Adopt rules that enforce the requirements in this act
970 to the maximum possible extent while avoiding the constitutional
971 problems or other problems identified by the federal or state
972 court; and

973 (b) Issue notice of those rules, no later than 30 days
974 after the date of the court ruling.

975 (7) If the department or agency, as applicable, fails to

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976 | adopt the rules and issue notice under subsection (6), a person
977 | may petition for a writ of mandamus requiring the department or
978 | agency, as applicable, to adopt the rules and issue notice.

979 | Section 13. This act shall take effect July 1, 2022.