

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1744

INTRODUCER: Senator Storms

SUBJECT: Abortions

DATE: March 23, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Except in a medical emergency, this bill provides that consent to a termination of pregnancy is voluntary and informed if a woman seeking an abortion has the gestational age of the fetus verified by an ultrasound, regardless of the woman's stage of pregnancy. The bill prescribes who is authorized to perform the ultrasound.

The bill prohibits an ultrasound from being performed if the woman seeking an abortion has official documentation evidencing that she is a victim of rape, incest, domestic violence, or human trafficking. The person performing the ultrasound must allow the woman to view the live ultrasound images and the ultrasound images must be explained contemporaneously to the woman before she gives informed consent to having the abortion procedure, unless this delay in the abortion procedure would cause substantial and irreversible impairment of a major bodily function of the woman.

The bill provides that a woman has a right to decline to view the ultrasound images after she has been offered an opportunity to view them. However, if the woman declines to view the ultrasound images, she is required to complete a form acknowledging her right to view the images, that she has declined to view the images, and that her refusal to view the images was of her own free will.

The bill provides that consent to a termination of pregnancy is voluntary and informed if, among other things, a description of the fetus, including a description of the various stages of development, has been provided to the woman.

The bill requires the Agency for Health Care Administration (AHCA) to adopt rules requiring a woman seeking an abortion to take a urine or blood test, regardless of whether she will have an ultrasound performed. The AHCA must also adopt rules requiring an ultrasound evaluation for each patient, unless the patient has documentary proof that she is a victim of rape, incest, domestic violence, or human trafficking.

The bill also includes a severability clause, which severs any provision of the bill that is held invalid.

This bill substantially amends the following sections of the Florida Statutes: 390.0111 and 390.012.

This bill creates an undesignated section of the Florida Statutes.

## II. Present Situation:

### Background

Under Florida law the term “abortion” means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.<sup>1</sup> “Viability” means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.<sup>2</sup> Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). An abortion can be performed by surgical or medical means (medicines that induce a miscarriage).<sup>3</sup>

An abortion in Florida must be performed by a physician licensed to practice medicine or osteopathic medicine who is licensed under ch. 458, F.S., ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.<sup>4</sup> No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.<sup>5</sup>

According to the AHCA, for the calendar year 2009, a total of 81,916 abortions were performed by licensed physicians. During calendar year 2010, a total of 79,908 abortions were performed by licensed physicians.<sup>6</sup>

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<sup>1</sup> Section 390.011, F.S.

<sup>2</sup> Section 390.0111, F.S.

<sup>3</sup> Suzanne R. Trupin, M.D., *Elective Abortion*, December 21, 2010, available at: <http://www.emedicine.com/med/TOPIC3312.HTM> (Last visited on March 11, 2011).

<sup>4</sup> Section 390.0111(2), F.S.

<sup>5</sup> Section 390.0111(8), F.S.

<sup>6</sup> Agency for Health Care Administration, *2011 Bill Analysis & Economic Impact Statement for SB 1748*, on file with the Senate Health Regulation Committee.

## Abortion Clinics

Abortion clinics are licensed and regulated by the AHCA under ch. 390, F.S., and part II of ch. 408, F.S. The AHCA has adopted rules in Chapter 59A-9, Florida Administrative Code, related to abortion clinics. Section 390.012, F.S., requires these rules to address the physical facility, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, and follow-up care. The rules relating to the medical screening and evaluation of each abortion clinic patient, at a minimum, require:

- A medical history including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history;
- A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa;
- The appropriate laboratory tests, including:
  - For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure,
  - A test for anemia,
  - Rh typing, unless reliable written documentation of blood type is available, and
  - Other tests as indicated from the physical examination;
- An ultrasound evaluation for patients who elect to have an abortion after the first trimester. If a person who is not a physician performs the ultrasound examination, that person must have documented evidence that he or she has completed a course in the operation of ultrasound equipment. If a patient requests, the physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant must review the ultrasound evaluation results and the estimate of the probable gestational age of the fetus with the patient before the abortion procedure is performed; and
- The physician to estimate the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and write the estimate in the patient's medical history. The physician must keep original prints of each ultrasound examination in the patient's medical history file.

The biennial fee for an abortion clinic is \$514.00 and a level 2 (statewide and nationwide) background screen is required of the administrator responsible for the day to day operations of the clinic and the chief financial officer.<sup>7</sup>

## The Woman's Right to Know Act

The Woman's Right to Know Act (Act), Florida's informed consent law related to the termination of pregnancy procedures, was enacted by the Legislature in 1997.<sup>8</sup> The Act requires that, except in the event of a medical emergency,<sup>9</sup> prior to obtaining a termination of pregnancy,

<sup>7</sup> Agency for Health Care Administration, *Abortion Clinic*, available at: [http://www.fdhc.state.fl.us/mchq/health\\_facility\\_regulation/hospital\\_outpatient/abortion.shtml](http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/abortion.shtml) (Last visited on March 23, 2011).

<sup>8</sup> Chapter 97-151, L.O.F.

<sup>9</sup> Section 390.0111(3), F.S. "Medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her

a patient<sup>10</sup> must be provided the following information, in person, from the physician performing the procedure or the referring physician:

- The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of whether to terminate a pregnancy.
- The probable gestational age of the fetus at the time the procedure is to be performed.
- The medical risks to the patient and fetus of carrying the pregnancy to term.

The patient must also be provided printed materials that include a description of the fetus; a list of agencies that offer alternatives to terminating the pregnancy; and detailed information about the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care.<sup>11</sup> The written materials must be prepared and provided by the Department of Health, and the patient has the option to review the written materials provided.<sup>12</sup>

The patient must execute written acknowledgement that she has received all of the above information prior to the termination of pregnancy being performed.<sup>13</sup> The Act provides for disciplinary action against a physician who fails to comply.<sup>14</sup>

#### ***Litigation of the Woman's Right to Know Act***

Shortly after the enactment of the Woman's Right to Know Act, its validity was challenged under the Florida and federal constitutions. The plaintiff physicians and clinics successfully enjoined the enforcement of the Act pending the outcome of the litigation, and the injunction was upheld on appeal.<sup>15</sup> Thereafter, the plaintiffs were successful in obtaining a summary judgment against the State on the grounds that the Act violated the right to privacy under Art. I, s. 23 of the Florida Constitution and was unconstitutionally vague under the federal and state constitutions. This decision was also upheld on appeal.<sup>16</sup> The State appealed this decision to the Florida Supreme Court.<sup>17</sup>

The Florida Supreme Court addressed two issues raised by the plaintiffs. With regard to whether the Act violated a woman's right to privacy, the Court determined that the information required to be provided to women in order to obtain informed consent was comparable to those informed consent requirements established in common law and by Florida statutory law<sup>18</sup> applicable to

pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function. Section 390.0114(2)(d), F.S.

<sup>10</sup> The Act allows for the woman's guardian to receive the information, if she is mentally incompetent.

<sup>11</sup> Section 390.0111(3), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Section 390.0111(3)(c), F.S. The Department of Health, or the appropriate board, may suspend or permanently revoke a license; restrict a practice or license, impose an administrative fine not to exceed \$10,000 for each count or separate offense; issue a reprimand or letter of concern; place the licensee on probation for a period of time and subject it to conditions; take corrective action; impose an administrative fine for violations regarding patient rights; refund fees billed and collected from the patient or a third party on behalf of the patient; or require that the practitioner undergo remedial education. *See* s. 458.331 and s. 459.015, F.S.

<sup>15</sup> *Florida v. Presidential Women's Center*, 707 So. 2d 1145 (Fla. 4<sup>th</sup> Dist. Ct. App. 1998).

<sup>16</sup> *Florida v. Presidential Women's Center*, 884 So. 2d 526 (Fla. 4<sup>th</sup> Dist. Ct. App. 2004).

<sup>17</sup> *Florida v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006).

<sup>18</sup> *Presidential Women's Center*, 937 So. 2d at 117-118. Section 766.103, F.S., is a general informed consent law for the medical profession, which requires that a patient receive information that would provide a "a reasonable individual" with a

other medical procedures.<sup>19</sup> Accordingly, the Court determined that the Act was not an unconstitutional violation of a woman's right to privacy.<sup>20</sup>

Second, the Supreme Court addressed the allegation that the term "reasonable patient," and the Act's reference to information about "risks" were unconstitutionally vague. The plaintiffs argued it was unclear whether the Act requires patients to receive information about "non-medical" risks, such as social, economic or other risks.<sup>21</sup> The Court rejected these arguments and held that ". . .the Act constitutes a neutral informed consent statute that is comparable to the common law and to informed consent statutes implementing the common law that exist for other types of medical procedures. . . ."<sup>22</sup>

### Relevant Case Law

In 1973, the landmark case of *Roe v. Wade* established that restrictions on a woman's access to secure an abortion are subject to a strict scrutiny standard of review.<sup>23</sup> In *Roe*, the U.S. Supreme Court determined that a woman's right to have an abortion is part of the fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, justifying the highest level of review.<sup>24</sup> Specifically, the Court concluded that: (1) during the first trimester, the state may not regulate the right to an abortion; (2) after the first trimester, the state may impose regulations to protect the health of the mother; and (3) after viability, the state may regulate and proscribe abortions, except when it is necessary to preserve the life or health of the mother.<sup>25</sup> Therefore, a state regulation limiting these rights may be justified only by a compelling state interest, and the legislative enactments must be narrowly drawn to express only legitimate state interests at stake.<sup>26</sup>

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court relaxed the standard of review in abortion cases involving adult women from strict scrutiny to unduly burdensome, while still recognizing that the right to an abortion emanates from the constitutional penumbra of privacy rights.<sup>27</sup> In *Planned Parenthood*, the Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference.<sup>28</sup> The Court concluded that the state may regulate the abortion as long as the regulation does not impose an undue burden on a woman's decision to choose an abortion.<sup>29</sup> If the purpose of a provision of law is to place substantial obstacles in the path of a

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general understanding of the procedure he or she will undergo, medically acceptable alternative procedures or treatments, and the substantial potential risks or hazards associated with the procedure. The court also refers to s. 458.324, F.S. (informed consent for patients who may be in high risk of developing breast cancer); s. 458.325, F.S. (informed consent for patients receiving electroconvulsive and psychosurgical procedures); and s. 945.48, F.S. (express and informed consent requirements for inmates receiving psychiatric treatment).

<sup>19</sup> *Id.*

<sup>20</sup> *Presidential Women's Center*, 937 So. 2d at 118, 120.

<sup>21</sup> *Presidential Women's Center*, 937 So. 2d at 118-119.

<sup>22</sup> *Id.* at 120.

<sup>23</sup> 410 U.S. 113 (1973).

<sup>24</sup> 410 U.S. 113, 154 (1973).

<sup>25</sup> 410 U.S. 113, 162-65 (1973).

<sup>26</sup> 410 U.S. 113, 152-56 (1973).

<sup>27</sup> 505 U.S. 833, 876-79 (1992).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

woman seeking an abortion before viability, it is invalid; however, after viability the state may restrict abortions if the law contains exceptions for pregnancies endangering a woman's life or health.<sup>30</sup>

The unduly burdensome standard as applied in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which is generally considered to be a hybrid between strict scrutiny and intermediate level scrutiny, shifted the Court's focus to whether a restriction creates a substantial obstacle to access. This is the prevailing standard today applied in cases in which abortion access is statutorily restricted.

However, the undue burden standard was held not to apply in Florida. The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours of actual notice to one parent or to the legal guardian of a pregnant minor before terminating the pregnancy of the minor. Although a judicial waiver procedure was included, the act was never enforced.<sup>31</sup> In 2003, the Florida Supreme Court<sup>32</sup> ruled this legislation unconstitutional on the grounds that it violated a minor's right to privacy, as expressly protected under Article I, s. 23 of the Florida Constitution.<sup>33</sup> Citing the principle holding of *In re T.W.*,<sup>34</sup> the Court reiterated that, as the privacy right is a fundamental right in Florida, any restrictions on privacy warrant a strict scrutiny review, rather than that of an undue burden. Here, the Court held that the state failed to show a compelling state interest and therefore, the Court permanently enjoined the enforcement of the Parental Notice of Abortion Act.<sup>35</sup>

## Ultrasound

An ultrasound is a technique involving the formation of a two-dimensional image used for the examination and measurement of internal body structures and the detection of bodily abnormalities.<sup>36</sup> It uses high frequency sound waves (ultrasound) to produce dynamic images (or sonograms) of organs, tissues, or blood flow inside the body. Ultrasound is used to examine many parts of the body, such as the abdomen, breast, reproductive system, heart, and blood vessels, and is increasingly being used to detect heart disease, vascular disease, and injuries to the muscles, tendons, and ligaments.<sup>37</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> See s. 390.01115, F.S. (repealed by s. 1, ch. 2005-52, Laws of Florida). Ch. 2005-52, Laws of Florida created s. 390.01114, F.S., the revised Parental Notice of Abortion Act.

<sup>32</sup> *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612, 619-20 (Fla. 2003)

<sup>33</sup> The constitutional right of privacy provision reads: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." FLA. CONST. art. I, s. 23.

<sup>34</sup> 551 So. 2d 1186, 1192 (Fla. 1989).

<sup>35</sup> *North Florida Women's Health and Counseling Services*, *supra* note 16, at 622 and 639-40.

<sup>36</sup> Merriam-Webster, MedlinePlus, Medical Dictionary, available at: <http://www2.merriam-webster.com/cgi-bin/mwmednlm?book=Medical&va=ultrasound>, (last viewed March 23, 2011).

<sup>37</sup> Society of Diagnostic Medical Sonography, *Medical Ultrasound Fact Sheet* (2010), available at: <http://www.sdms.org/resources/muam/MUAMkit.pdf> (last viewed March 23, 2011).

Ultrasounds are considered to be a safe, non-invasive means of investigating a fetus during pregnancy.<sup>38</sup> An ultrasound may be used to detect fetal body measurements to determine the gestational age of the fetus.<sup>39</sup> If the date of a patient's last menstrual cycle is uncertain, then an ultrasound can be used to arrive at a correct "dating" for the patient.<sup>40</sup> Moreover, an ultrasound can be used to detect an ectopic pregnancy, which is a potentially fatal condition in which the fertilized egg implants outside a woman's uterus, such as in the fallopian tubes, ovaries, or abdomen.<sup>41</sup> Approximately one in every 50 pregnancies results in an ectopic pregnancy, and it is the leading cause of pregnancy-related death for women in their first trimester of pregnancy.<sup>42</sup> According to the National Abortion Federation, "[i]n the context of medical abortion, ultrasonography can help determine gestational age, assess the outcome of the procedure, and diagnose ectopic pregnancy and other types of abnormal pregnancy."<sup>43</sup>

Two forms of ultrasound used in pregnancy are transabdominal and transvaginal ultrasound, with advantages and disadvantages to each. Transabdominal ultrasound provides a panoramic view of the abdomen and pelvis, whereas transvaginal provides a more limited pelvic view. Transabdominal ultrasound is noninvasive, and transvaginal ultrasound requires insertion of a probe into the vagina.<sup>44</sup> The transabdominal method requires a full bladder for best viewing, which may be accomplished by the patient drinking several glasses of water prior to the examination. According to the National Abortion Federation, some patients find transvaginal ultrasound more comfortable than transabdominal because transvaginal does not require a distended bladder.<sup>45</sup> Transabdominal ultrasound cannot always detect pregnancies under 6 weeks' gestation, while transvaginal ultrasound can detect pregnancies at 4.5 to 5 weeks' gestation.<sup>46</sup>

In Florida, clinics providing pregnancy termination procedures in the second trimester are required to have ultrasound equipment and conduct ultrasounds on patients prior to the procedure.<sup>47</sup> This requirement is not contingent on the number of second trimester procedures performed by the clinic; if a clinic performs only one second trimester termination of pregnancy a year, that clinic must have ultrasound equipment on site and use it for that procedure. Current law also requires that the person performing the ultrasound must be either a physician or a person working in conjunction with the physician who has documented evidence of having completed a course in the operation of ultrasound equipment as prescribed by rule.<sup>48</sup>

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<sup>38</sup> Dr. Joseph S.K. Woo, *Obstetric Ultrasound, A Comprehensive Guide*, available at: <http://www.ob-ultrasound.net/> (Last viewed March 23, 2011).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* See also Melissa Conrad Stoppler, M.D., Charles C.P. Davis, MD, PhD, and William C. Sheil, Jr. MD, FACP, FACR; MedicineNet.com; *Ectopic Pregnancy*; available at: [http://www.medicinenet.com/ectopic\\_pregnancy/article.htm](http://www.medicinenet.com/ectopic_pregnancy/article.htm) (Last viewed March 23, 2011).

<sup>42</sup> *Id.*

<sup>43</sup> National Abortion Federation, *Early Options: Ultrasound Imagery in Early Pregnancy*, available at: [http://www.prochoice.org/education/cme/online\\_cme/m4ultrasound.asp](http://www.prochoice.org/education/cme/online_cme/m4ultrasound.asp) (last viewed March 23, 2011).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* See also *supra*, fn. 38.

<sup>46</sup> *Id.*

<sup>47</sup> Section 390.012(3)(d)4, F.S.

<sup>48</sup> *Id.*

A clinic is not currently required under the law to review the ultrasound results with the patient prior to the termination of pregnancy, unless the patient requests to review the results. Furthermore, the requested review is not required to be done with the patient as the ultrasound is being conducted.<sup>49</sup>

Current law does not require ultrasounds for first trimester pregnancy termination procedures. However, many providers in Florida voluntarily conduct ultrasounds prior to terminating a pregnancy during the first trimester.<sup>50</sup> For example, A Jacksonville Woman's Health Center, Inc., indicates on its website that ultrasounds are performed on every patient to confirm gestational age, rule out an ectopic pregnancy, and provide the physician with information necessary to perform the procedure.<sup>51</sup>

There are several states with various regulations concerning the use of ultrasounds prior to an abortion. Nine states require verbal counseling or written materials to include information on accessing ultrasound services. Eighteen states regulate the provision of ultrasound by abortion providers. Three states mandate that an abortion provider perform an ultrasound on each woman seeking an abortion and require the provider to offer the woman the opportunity to view the image. Two states require the abortion provider to perform an ultrasound on each woman obtaining an abortion after the first trimester and to offer the woman the opportunity to view the image. Ten states require that a woman be provided with the opportunity to view an ultrasound image if her provider performs the procedure as part of the preparation for an abortion. Four states require a woman to be provided with the opportunity to view an ultrasound image.<sup>52</sup>

### III. Effect of Proposed Changes:

Except in a medical emergency, this bill provides that consent to a termination of pregnancy is voluntary and informed if a woman seeking an abortion has the gestational age of the fetus verified by an ultrasound, regardless of the woman's stage of pregnancy. The bill requires a physician who is to perform the abortion or a person who has completed a course in the operation of ultrasound equipment as prescribed by rule and works in conjunction with the performing physician to perform the ultrasound. However, the physician or the authorized person may not perform an ultrasound if, at the time the woman schedules or arrives for her appointment to obtain the abortion, documentation is provided (e.g. a restraining order, police report, medical record, or court order) evidencing that the woman is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking.

The person performing the ultrasound must allow the woman to view the live ultrasound images and a physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant working in conjunction with the physician, must contemporaneously

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<sup>49</sup> *Id.*

<sup>50</sup> *See, e.g.*, A Choice for Women Website at <http://www.achoiceforwomen.com/services/services.asp>; Eve Medical Center Website at <http://www.eveabortioncarespecialists.com/1and2Trimester.html>; North Florida Women's Health & Counseling Services, Inc., Website at [http://www.northfloridawomenshealth.com/abortion\\_services.html](http://www.northfloridawomenshealth.com/abortion_services.html); and A Jacksonville Women's Health Center, Inc., Website at <http://www.ajacksonvillewomenshealth.com/abortion.html>; (all last viewed March 23, 2011).

<sup>51</sup> *See* A Jacksonville Women's Health Center, Inc., Website <http://www.ajacksonvillewomenshealth.com/abortion.html> (Last viewed on March 23, 2011).

<sup>52</sup> Guttmacher Institute, *State Policies in Brief: Requirements for Ultrasound*, March 1, 2011, available at: [http://www.guttmacher.org/statecenter/spibs/spib\\_RFU.pdf](http://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf) (Last visited on March 23, 2011).



explain the ultrasound images to the woman before she gives informed consent to having the abortion procedure. However, if at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a medical record or other documentation is presented, which evidences that the woman has been diagnosed as having a condition that, on the basis of a physician's good faith clinical judgment, would create a serious risk of substantial and impairment of a major bodily function of the woman, the ultrasound is not required to be provided or explained.

The bill provides that a woman has a right to decline to view the ultrasound images after she has been offered an opportunity to view them. However, if the woman declines to view the ultrasound images, she is required to complete a form acknowledging that she was offered an opportunity to view the ultrasound, that she has declined to view the images, and that her refusal to view the images was of her own free will and not based on any undue influence from any third party.

The bill provides that consent to a termination of pregnancy is voluntary and informed if, among other things, a written description of the fetus, including a description of the various stages of development, has been provided to the woman.

The bill requires the AHCA to adopt rules requiring a woman seeking an abortion in an abortion clinic to take a urine or blood test, regardless of whether she will have an ultrasound performed. The AHCA must also adopt rules requiring an ultrasound evaluation for each patient in an abortion clinic, unless the patient has documentary proof that she is a victim of rape, incest, domestic violence, or human trafficking.

The bill also includes a severability clause, which severs any provision of the bill that is held invalid.

The bill provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**D. Other Constitutional Issues:**

If the bill, should it become law, is challenged because of the ultrasound requirements, it will be subject to a strict scrutiny review, rather than that of an undue burden test pursuant to *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*,<sup>53</sup> as discussed above under the subheading, "Relevant Case Law."

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill requires clinics conducting only first trimester terminations of pregnancy to purchase ultrasound equipment, if such equipment is not currently available on premises. However, some providers that already perform ultrasounds regardless of the stage of pregnancy will not experience any increased costs.

A woman seeking to have an abortion may incur costs associated with the required ultrasound in addition to a urine or blood test to determine if the woman is pregnant.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Line 52 of the bill prevents a physician from performing an ultrasound if certain documentation is presented evidencing the woman is seeking the abortion because she is a victim of rape, incest, domestic violence, or human trafficking. This language does not provide an exception for instances when a woman requests the ultrasound despite the circumstances or where it may be the best practice of the physician to perform an ultrasound.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>53</sup> 866 So. 2d 612 (Fla. 2003).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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