A bill to be entitled
An act relating to assisted reproduction facilities; 
creating s. 383.61, F.S.; defining terms; requiring a 
donor to enter into a certain contract with a donor 
bank or fertility clinic before he or she may donate; 
providing requirements for the contract; requiring a 
donor bank to clearly label each donation that is 
transferred to a fertility clinic according to the 
terms of each donor’s contract; requiring a fertility 
clinic to ensure that each donation received from a 
donor or a donor bank is implanted, returned, or 
disposed of according to the terms of the applicable 
donor’s contract; requiring donor banks and fertility 
clinics to develop, by a specified date, a written 
best practices policy for storing and segregating 
sperm, eggs, and embryos; requiring the annual 
submission of such written policies to the department 
for review; creating a presumption of recklessness 
against a physician at a fertility clinic that does 
not have such a written policy; requiring the 
Department of Health to perform annual inspections of 
donor banks and fertility clinics without notice; 
requiring the department to impose specified fines on 
donor banks and fertility clinics for certain 
violations and specified conduct; requiring such fines 
to be deposited into the Rape Crisis Program Trust 
Fund; providing civil and criminal causes of action 
for, criminal penalties for, and disciplinary action 
against a physician who intentionally or recklessly
artificially inseminates a patient with the incorrect sperm, eggs, or embryos; tolling applicable time limitations for civil actions, criminal prosecution, and disciplinary proceedings relating to certain violations until certain conditions are met; providing an effective date.

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

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

383.61 Assisted reproduction facilities.—
(1) DEFINITIONS.—As used in this section, the term:
(a) “Assisted reproductive technology” means all treatments or procedures that include the handling of human eggs, sperm, or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and any other specific technology the department deems appropriate by rule.
(b) “Department” means the Department of Health.
(c) “Donation” means the giving of human sperm, eggs, or embryos to a donor bank or fertility clinic for use in assisted reproduction, regardless of whether for personal use or compensation.
(d) “Donor” means a person who gives a donation.
(e) “Donor bank” means a facility that collects donations from donors for use by a fertility clinic.
(f) “Fertility clinic” means a facility in which human eggs are subject to assisted reproductive technology based on manipulation of eggs or embryos that are subject to
(g) “Incorrect insemination” means the implantation of sperm, eggs, or embryos into a patient which is contrary to the terms of the donor’s contract.

(2) DONOR CONTRACTS.—
(a) A donor must enter into a contract with a donor bank or fertility clinic before he or she may donate to that donor bank or fertility clinic. The contract must, at a minimum, indicate what must be done with the specimen if:
   1. The donor dies or becomes incapacitated;
   2. A designated recipient for the donation dies or becomes incapacitated;
   3. The donor and recipient separate or their marriage is dissolved; and
   4. The specimen is unused, including whether it may be disposed of, offered to a different recipient, or donated to science.

(b) A donor bank must ensure that each donation transferred to a fertility clinic is clearly labeled according to the terms of each donor’s contract.

(c) A fertility clinic must ensure that each donation received from a donor or a donor bank is implanted, returned, or disposed of according to the terms of the applicable donor’s contract.

(3) BEST PRACTICES POLICIES.—
(a) By January 1, 2021, each donor bank and fertility clinic in this state shall develop a written best practices policy for storing and segregating sperm, eggs, and embryos to ensure that the correct specimens are implanted in the correct
individuals and otherwise handled as directed by each donor’s contract with the donor bank or fertility clinic.

(b) The best practices policy must be submitted to the department annually for review.

(c) Evidence that a fertility clinic does not have a written best practices policy in place creates a presumption of physician recklessness in a cause of action brought under this section.

(4) INSPECTIONS.—The department shall perform annual inspections of donor banks and fertility clinics without notice.

(5) FINES.—

(a) The department shall impose a fine of $5,000 on a donor bank for each failure to clearly label a donation or otherwise comply with the terms of a donor’s contract or this section.

(b) The department shall impose a fine of up to $20,000 on a fertility clinic that fails to comply with the terms of a donor’s contract or this section.

(c) The department shall impose an administrative fine of up to $20,000 on a donor bank or a fertility clinic for each violation of 42 U.S.C. part 263.

(d) Fines collected under this section shall be deposited into the Rape Crisis Program Trust Fund established within the department under s. 794.056.

(6) CAUSES OF ACTION.—A physician who intentionally or recklessly implants the incorrect sperm, eggs, or embryos into a patient:

(a) Is liable to that patient or a child born from such assisted reproduction for all damages reasonably necessary to compensate the patient or the child for any injuries suffered as
a result of the physician’s intentional or reckless incorrect insemination, including, but not limited to, emotional or mental distress.

(b) Commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Commits a sexual battery under s. 794.011, if the incorrect insemination is of the physician’s own biological specimen.

(d) Is subject to disciplinary action under s. 456.072(1)(k), s. 458.331(1), or s. 459.015(1).

(7) TOLLING TIME LIMITATIONS.—

(a) The time limitations with respect to any civil action that may be brought by, or on behalf of, a patient or a child allegedly injured as a result of an incorrect insemination do not begin to run until the patient discovers the violation.

(b) The applicable time limitations in s. 775.15 to commence prosecution for a violation of subsection (6) do not begin to run until the patient discovers the violation and reports it to a law enforcement agency or other governmental agency. Such law enforcement agency or other governmental agency shall promptly report such allegation to the state attorney for the judicial circuit in which the alleged violation occurred.

(c) The applicable time limitations in s. 456.073(13) to file an administrative complaint against a licensee for a violation of subsection (6) do not begin to run until the patient discovers the violation and reports it to the department or a law enforcement agency. Such law enforcement agency shall promptly report such allegation to the department.

Section 2. This act shall take effect July 1, 2020.