By the Committee on Criminal Justice; and Senators Book and Stewart

A bill to be entitled An act relating to reproductive health; creating s. 383.61, F.S.; defining terms; requiring commissioning parties and donors to enter into a contract with a donor bank, fertility clinic, or health care practitioner before donating reproductive material; providing requirements for the contract; requiring donor banks, fertility clinics, and health care practitioners to develop certain written best practice policies by a specified date; requiring the annual submission of such written policies to the appropriate licensing agency or the Department of Health; providing labeling, contract compliance, and record retention requirements; prohibiting a health care practitioner from implanting or inseminating a recipient with the health care practitioner’s own reproductive material; requiring the Agency for Health Care Administration to conduct annual unannounced inspections of donor banks and fertility clinics; providing penalties; amending s. 456.072, F.S.; providing grounds for disciplinary action; creating s. 456.51, F.S.; defining the term “pelvic examination”; prohibiting a health care practitioner from performing a pelvic examination on a patient without first obtaining the written consent of the patient or the patient’s legal representative; providing exceptions; amending ss. 458.331 and 459.015, F.S.; providing grounds for disciplinary action; creating s. 784.086, F.S.; defining terms; establishing the criminal
offense of reproductive battery; providing criminal penalties; tolling the period of limitations; providing that a recipient’s consent to an anonymous donor is not a defense to the crime of reproductive battery; 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 those procreative procedures that involve the laboratory handling of human eggs, preembryos, or sperm, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear stage transfer, tubal embryo transfer, and zygote intrafallopian transfer.
(b) “Commissioning party” means the intended parent or parents of a child who will be conceived by means of assisted reproductive technology.
(c) “Donor” means a person who donates reproductive material, regardless of whether for personal use or compensation.
(d) “Donor bank” means any facility that collects reproductive material from donors for use by a fertility clinic.
(e) “Egg” means the unfertilized female reproductive cell.
(f) “Fertility clinic” means a facility in which reproductive materials are subject to assisted reproductive
technology for the purpose of implantation.

(g) “Health care practitioner” has the same meaning as in s. 456.001.

(h) “Preembryo” means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.

(i) “Recipient” means a person who receives, through implantation, reproductive material from a donor.

(j) “Reproductive material” means any human egg, preembryo, or sperm.

(k) “Sperm” means the male reproductive cell.

(2)(a) CONTRACT REQUIREMENTS.—A commissioning party or donor must enter into a contract with the donor bank, fertility clinic, or health care practitioner before he or she may make a donation of reproductive material. The contract must, at a minimum, indicate what must be done with the reproductive material if any of the following occurs:

1. The donor dies or becomes incapacitated.

2. A designated recipient for the donation dies or becomes incapacitated.

3. The commissioning party separates or the party’s marriage is dissolved.

4. One member of the commissioning party dies or becomes incapacitated.

5. The reproductive material is unused, including whether it may be disposed of, offered to a different recipient, or donated to science.

6. Any other unforeseen circumstance.

(b) The donor bank, fertility clinic, or health care practitioner must ensure that each donation is clearly labeled
according to the terms of each donor or commissioning party’s contract.

  (c) The donor bank, fertility clinic, or health care practitioner must ensure that the donation is implanted, returned, disposed of, or stored according to the terms of the contract.

(3) BEST PRACTICE POLICIES.—
  (a) By January 1, 2021, each donor bank, fertility clinic, and health care practitioner that provides assisted reproductive technology in this state shall develop written best practice policies consistent with 42 U.S.C. s. 263a(f).
  (b) The best practice policies must be submitted to the appropriate licensing agency or department annually for review.
  (c) All reproductive material stored by a donor bank, fertility clinic, or health care practitioner must be clearly labeled.
  (d) A donor bank, fertility clinic, or health care practitioner must comply with the terms of the contract pursuant to subsection (2).
  (e) A donor bank, fertility clinic, or health care practitioner must maintain all records for at least 30 years.
  (f) A health care practitioner may not implant or inseminate a recipient or cause a recipient to be implanted or inseminated with reproductive material of the health care practitioner.

(4) INSPECTIONS.—The Agency for Health Care Administration shall perform annual inspections of donor banks and fertility clinics without notice.

(5) PENALTIES.—A donor bank or fertility clinic in
violation of subsections (2) or (3) is subject to penalties provided in s. 400.995.

Section 2. Paragraphs (pp) and (qq) are added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—
(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(pp) Intentionally implanting or inseminating a recipient or causing a recipient to be implanted or inseminated with the reproductive material, as defined in s. 383.61, of a donor without the recipient’s consent.

(qq) Violating s. 383.61.

Section 3. Section 456.51, Florida Statutes, is created to read:

456.51 Health care practitioners; consent for pelvic examinations.—
(1) As used in this section, the term “pelvic examination” means the direct palpation of the organs of the female internal reproductive system.

(2) A health care practitioner may not perform a pelvic examination on a patient without the written consent of the patient or the patient’s legal representative executed specific to, and expressly identifying, the pelvic examination, unless:

(a) A court orders performance of the pelvic examination for the collection of evidence; or

(b) The pelvic examination is immediately necessary to avert a serious risk of imminent, substantial, and irreversible physical impairment of a major bodily function of the patient.
Section 4. Paragraphs (ww) and (xx) are added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(ww) Intentionally implanting or inseminating a recipient or causing a recipient to be implanted or inseminated with the reproductive material, as defined in s. 383.61, of a donor without the recipient’s consent.

(xx) Violating s. 383.61.

Section 5. Paragraphs (yy) and (zz) are added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(yy) Intentionally implanting or inseminating a recipient or causing a recipient to be implanted or inseminated with the reproductive material, as defined in s. 383.61, of a donor without the recipient’s consent.

(zz) Violating s. 383.61.

Section 6. Section 784.086, Florida Statutes, is created to read:

784.086 Reproductive battery.—

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

(a) “Donor” has the same meaning as in s. 383.61.

(b) “Health care practitioner” has the same meaning as in s. 456.001.
(c) “Recipient” has the same meaning as in s. 383.61.

(d) “Reproductive material” has the same meaning as in s. 383.61.

(2) A health care practitioner may not intentionally penetrate the vagina of a recipient with the reproductive material of a donor or any object containing the reproductive material of a donor, knowing the recipient has not consented to the use of the reproductive material from that donor.

(a) A health care practitioner who violates this section commits reproductive battery, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A health care practitioner who violates this section and is the donor of the reproductive material commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding any other law, the period of limitation for a violation under this section does not begin to run until the date on which the violation is discovered and reported to law enforcement or any other governmental agency.

(4) It is not a defense to the crime of reproductive battery that the recipient consented to an anonymous donor.

Section 7. This act shall take effect July 1, 2020.