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, health care practitioner, or reproductive storage facility before donating reproductive material; providing requirements for the contract; requiring certain donor banks, fertility clinics, health care practitioners, and reproductive storage facilities 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; amending s. 456.072, F.S.; providing grounds for disciplinary action; amending s. 456.074, F.S.; requiring the department to immediately suspend the license of certain health care practitioners under certain circumstances; 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; providing an exception; 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 storage or 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 being transferred into the body of a recipient.

(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 has a donor’s reproductive material transferred into her body.

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

(k) “Reproductive storage facility” means a facility in which reproductive materials are stored until such time that they are transferred into the body of a recipient using assisted reproductive technology.

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

2. CONTRACT REQUIREMENTS.—

(a) A commissioning party or donor must enter into a contract with the donor bank, fertility clinic, health care practitioner, or reproductive storage facility 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, health care practitioner, or reproductive storage facility 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, health care practitioner, or reproductive storage facility must ensure that the donation is transferred to a recipient, 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, health care practitioner, and reproductive storage facility 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, health care practitioner, or reproductive storage facility must be clearly labeled.

   (d) A donor bank, fertility clinic, health care practitioner, or reproductive storage facility must comply with the terms of the contract pursuant to subsection (2).

   (e) A donor bank, fertility clinic, health care
practitioner, or reproductive storage facility must maintain all
records for at least 30 years.

(f) A health care practitioner may not transfer or
inseminate a recipient or cause a recipient to have transferred
into her body or be inseminated with the reproductive material
of the health care practitioner.

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 transferring into a recipient or
inseminating a recipient with, or causing a recipient to have
transferred into her body or be 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. Subsection (1) of section 456.074, Florida
Statutes, is amended to read:

456.074 Certain health care practitioners; immediate
suspension of license.—
(1) The department shall issue an emergency order
suspending the license of any person licensed under chapter 458,
chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
chapter 464, chapter 465, chapter 466, or chapter 484 who pleads
guilty to, is convicted or found guilty of, or who enters a plea
of nolo contendere to, regardless of adjudication, to:

(a) A felony under chapter 409, chapter 817, or chapter 893
595-04242-20

or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;

(b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.
285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.
1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the
Medicaid program; or

(c) A felony under s. 784.086, relating to a reproductive
battery.

Section 4. 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 series of tasks that comprise an examination of the
vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or
external pelvic tissue or organs using any combination of
modalities, which may include, but need not be limited to, the
health care provider’s gloved hand or instrumentation, in
accordance with the prevailing professional standard of care for
the health care practitioner as specified in s. 766.102.

(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;

(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;
or

(c) The pelvic exam is indicated in the standard care for a procedure that the patient has consented to.

Section 5. 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 transferring into a recipient or inseminating a recipient with, or causing a recipient to have transferred into her body or be 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 6. 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 transferring into a recipient or inseminating a recipient with, or causing a recipient to have transferred into her body or be 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 7. 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 transfer into the body of a recipient the reproductive material of a donor or any object containing the reproductive material of a donor, knowing that the recipient has not consented to the use of the reproductive material from that donor.
   (a) A health care practitioner who violates this subsection commits 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, unless the recipient has provided written consent to the use of the health care practitioner’s reproductive material.
(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 8. This act shall take effect July 1, 2020.