${\bf By}$ Senator Rodriguez

	39-01015-21 2021744
1	A bill to be entitled
2	An act relating to the protection of a pain-capable
3	unborn child from abortion; amending s. 390.011, F.S.;
4	revising the definition of the terms "gestation" and
5	"trimester"; creating s. 390.301, F.S.; providing a
6	short title; defining terms; providing legislative
7	findings; prohibiting the attempted or actual
8	performance or induction of an abortion in certain
9	circumstances; providing a parameter for determining
10	the applicability of the prohibition; requiring
11	physicians to make a specified determination before
12	performing or inducing or attempting to perform or
13	induce abortions; requiring physicians performing or
14	inducing abortions to determine the probable
15	gestational age of the unborn child; providing an
16	exception; requiring physicians to use an abortion
17	method that provides the best opportunity for the
18	unborn child to survive the abortion in specified
19	circumstances; beginning on a specified date,
20	requiring certain physicians to report specified
21	information, including specified data, to the
22	Department of Health; prohibiting such reports from
23	including information that would identify the women
24	whose pregnancies were terminated; requiring such
25	reports to include unique medical record
26	identification numbers; beginning on a specified date,
27	requiring the department to publish a summary of data
28	from the physician reports on an annual basis;
29	providing requirements for such summary; requiring the

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such summary; providing penalties for failure to
timely submit physician reports; providing for
disciplinary action; requiring the department to adopt
rules; providing criminal penalties and civil and
criminal remedies; providing for attorney fees;
requiring courts to rule on the protection of certain
identifying information in certain civil and criminal
proceedings or actions; requiring that certain actions
be brought under a pseudonym; providing construction
and severability; providing an effective date.
WHEREAS, pain receptors are present throughout an unborn
child's entire body no later than 16 weeks probable gestational
age, and nerves link these receptors to the brain's thalamus and
subcortical plate by no later than 20 weeks probable gestational
age, and
WHEREAS, an unborn child reacts to touch by 8 weeks
probable gestational age, and
WHEREAS, by 20 weeks probable gestational age, an unborn
child reacts to stimuli that would be recognized as painful if
applied to an adult human, by recoiling or exhibiting other
avoidance responses, and
avoidance responses, and WHEREAS, the application of painful stimuli to an unborn

56 WHEREAS, subjection to painful stimuli is associated with 57 long-term harmful neurodevelopmental effects, such as altered 58 pain sensitivity and, possibly, emotional, behavioral, and

hormones in the unborn child, known as the stress response, and

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2021744 39-01015-21 59 learning disabilities later in life, and 60 WHEREAS, for purposes of surgery on unborn children, fetal 61 anesthesia is routinely administered and is associated with a 62 decrease in stress hormones compared to their level when painful 63 stimuli are applied without anesthesia, and 64 WHEREAS, the assertion by some medical experts that an 65 unborn child is incapable of experiencing pain until after 20 weeks probable gestational age predominately rests on the 66 assumption that the ability to experience pain depends on the 67 68 cerebral cortex and requires nerve connections between the 69 thalamus and the cerebral cortex, and 70 WHEREAS, recent medical research and analysis, especially 71 since 2007, provide strong support for the conclusion that a 72 functioning cerebral cortex is not necessary to experience pain, 73 and 74 WHEREAS, substantial evidence indicates that children born 75 missing most of the cerebral cortex, a condition known as 76 hydranencephaly, nevertheless experience pain, and 77 WHEREAS, in adults, stimulation or ablation of the cerebral 78 cortex does not alter pain perception, while stimulation or 79 ablation of the thalamus does, and 80 WHEREAS, substantial evidence indicates that neural 81 elements, such as the subcortical plate, which develop at 82 specific times during the early development of an unborn child, 83 serve as pain-processing structures and are different from the neural elements used for pain processing by adults, and 84 85 WHEREAS, the assertion of some medical experts that an 86 unborn child remains in a coma-like sleep state that precludes 87 it from experiencing pain is inconsistent with the documented

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39-01015-21 2021744 88 reaction of unborn children to painful stimuli and with the 89 experience of fetal surgeons who have found it necessary to 90 sedate an unborn child with anesthesia to prevent it from 91 thrashing about in reaction to invasive surgery, and 92 WHEREAS, the Florida Legislature has the constitutional 93 authority to make the judgment that there is substantial medical 94 evidence that an unborn child is capable of experiencing pain as 95 early as 20 weeks probable gestational age, and 96 WHEREAS, the United States Supreme Court has noted, in 97 Gonzales v. Carhart, 550 U.S. 124, 162-164 (2007), that "the 98 Court has given state and federal legislatures wide discretion 99 to pass legislation in areas where there is medical and scientific uncertainty," that "the law need not give abortion 100 doctors unfettered choice in the course of their medical 101 102 practice, nor should it elevate their status above other 103 physicians in the medical community," and that "medical 104 uncertainty does not foreclose the exercise of legislative power 105 in the abortion context any more than it does in other 106 contexts," and 107 WHEREAS, in Marshall v. United States, 414 U.S. 417, 427 108 (1974) the United States Supreme Court stated that "when 109 Congress undertakes to act in areas fraught with medical and 110 scientific uncertainties, legislative options must be especially broad . . .," and 111 WHEREAS, the State of Florida asserts a compelling state 112

112 WHEREAS, the State of Florida asserts a compelling state 113 interest in protecting the lives of unborn children beginning at 114 the stage in their development at which substantial medical 115 evidence indicates that they are capable of feeling pain, and 116 WHEREAS, in enacting this legislation, the State of Florida

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39-01015-21 2021744 117 is not asking the United States Supreme Court to overturn or 118 revise its holding, first articulated in Roe v. Wade and reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. 119 120 Casey, 505 U.S. 833, 869 (1992), that the state interest in 121 unborn human life, which is "legitimate" throughout pregnancy, becomes "compelling" at the point of fetal viability, but, 122 123 rather, it is asserting a separate and independent state 124 interest in unborn human life which becomes compelling once an unborn child is capable of feeling pain, which is asserted not 125 126 instead of, but in addition to, the State of Florida's 127 compelling state interest in protecting the lives of unborn 128 children beginning at viability, and 129 WHEREAS, the United States Supreme Court, in Planned 130 Parenthood of Southeastern Pennsylvania v. Casey, established 131 that the "constitutional liberty of the woman to have some 132 freedom to terminate her pregnancy . . . is not so unlimited . . 133 . that from the outset the State cannot show its concern for the

134 life of the unborn, and at a later point in fetal development 135 the State's interest in life has sufficient force so that the 136 right of the woman to terminate the pregnancy can be 137 restricted," and

WHEREAS, the United States Supreme Court decision upholding the federal Partial-Birth Abortion Ban Act in *Gonzales v*. *Carhart*, 550 U.S. 124 (2007) vindicated the dissenting opinion in the earlier decision in *Stenberg v. Carhart*, 530 U.S. 914, 958-959 (2000) (Kennedy, J., dissenting), which had struck down a Nebraska law banning partial-birth abortions, and

144 WHEREAS, the dissenting opinion in *Stenberg v. Carhart* 145 stated that "we held [in *Casey*] it was inappropriate for the

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39-01015-21 2021744 146 Judicial Branch to provide an exhaustive list of state interests 147 implicated by abortion," that "Casey is premised on the States 148 having an important constitutional role in defining their interests in the abortion debate," that "it is only with this 149 150 principle in mind that [a state's] interests can be given proper weight," that "States also have an interest in forbidding 151 152 medical procedures which, in the State's reasonable 153 determination, might cause the medical profession or society as 154 a whole to become insensitive, even disdainful, to life, including life in the human fetus," and that "a State may take 155 156 measures to ensure the medical profession and its members are 157 viewed as healers, sustained by a compassionate and rigorous 158 ethic and cognizant of the dignity and value of human life, even 159 life which cannot survive without the assistance of others," and 160 WHEREAS, mindful of Leavitt v. Jane L., 518 U.S. 137 161 (1996), in which, in the context of determining the severability 162 of a state statute regulating abortion, the United States 163 Supreme Court noted that an explicit statement of legislative 164 intent specifically made applicable to a particular statute is 165 of greater weight than a general savings or severability clause, the Legislature intends that if any one or more provisions, 166 167 sections, subsections, sentences, clauses, phrases, or words of 168 this act or the application thereof to any person or 169 circumstance is found to be unconstitutional, the same is hereby declared to be severable, and the balance of the act shall 170 171 remain effective notwithstanding such unconstitutionality, and WHEREAS, the Legislature of the State of Florida declares, 172 173 moreover, that it would have passed this act, and each

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provision, section, subsection, sentence, clause, phrase, or

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175	word thereof, irrespective of the fact that any one or more
176	provisions, sections, subsections, sentences, clauses, phrases,
177	or words, or any of their applications, were to be declared
178	unconstitutional, NOW, THEREFORE,
179	
180	Be It Enacted by the Legislature of the State of Florida:
181	
182	Section 1. Subsection (6) and paragraph (a) of subsection
183	(12) of section 390.011, Florida Statutes, are amended to read:
184	390.011 Definitions.—As used in this chapter, the term:
185	(6) "Gestation" means the development of a human embryo or
186	fetus between the beginning of the pregnant woman's last
187	menstrual period fertilization and birth.
188	(12) "Trimester" means one of the following three distinct
189	periods of time in the duration of a pregnancy:
190	(a) "First trimester," which is the period of time from <u>the</u>
191	beginning of the pregnant woman's last menstrual period
192	fertilization through the end of the 11th week of gestation.
193	Section 2. Section 390.301, Florida Statutes, is created to
194	read:
195	390.301 Florida Pain-Capable Unborn Child Protection Act
196	(1) SHORT TITLEThis act may be cited as the "Florida
197	Pain-Capable Unborn Child Protection Act."
198	(2) DEFINITIONSAs used in this section, the term:
199	(a) "Abortion" means the use or prescription of an
200	instrument, medicine, drug, or any other substance or device to
201	intentionally kill the unborn child of a woman known to be
202	pregnant or to intentionally terminate the pregnancy of a woman
203	known to be pregnant with a purpose other than to produce a live

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204	birth and preserve the life and health of the child born alive
205	or to remove a dead unborn child.
206	(b) "Attempt to perform or induce an abortion" or
207	"attempting to perform or induce an abortion" means an act, or
208	an omission of a statutorily required act, which, under the
209	circumstances as perceived by the actor, constitutes a
210	substantial step in a course of conduct planned to culminate in
211	the performance or induction of an abortion in this state in
212	violation of this section.
213	(c) "Medical emergency" means a determination, using
214	reasonable medical judgment, that the pregnant woman's medical
215	condition necessitates the immediate abortion of an unborn child
216	before determining the probable gestational age of the unborn
217	child in order to avert the pregnant woman's death or a serious
218	risk to the pregnant woman of a substantial and irreversible
219	physical impairment of one or more of her major bodily
220	functions, not including psychological or emotional conditions,
221	which may result from the delay necessary to determine the
222	probable gestational age of the unborn child. A condition may
223	not be determined to be a medical emergency if it is based on a
224	claim or diagnosis that the pregnant woman will engage in
225	conduct that she intends to result in her death or in a
226	substantial and irreversible physical impairment of one or more
227	of her major bodily functions.
228	(d) "Probable gestational age of the unborn child" means
229	the gestational age, in weeks, of the unborn child at the time
230	the abortion of the unborn child is to be performed or induced
231	as determined from the beginning of the pregnant woman's last
232	menstrual period.

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233	(e) "Serious health risk to the unborn child's mother"
234	means that the unborn child's mother is at risk of death or a
235	substantial and irreversible physical impairment of one or more
236	of her major bodily functions, not including psychological or
237	emotional conditions, due to her pregnancy as determined through
238	the use of reasonable medical judgment. Such a determination may
239	not be made if it is based on a claim or diagnosis that the
240	unborn child's mother will engage in conduct that she intends to
241	result in her death or in the substantial and irreversible
242	physical impairment of one or more of her major bodily
243	functions.
244	(f) "Unborn child's mother" means a pregnant woman of the
245	species Homo sapiens, regardless of age.
246	(3) PROTECTION FROM ABORTION OF AN UNBORN CHILD CAPABLE OF
247	FEELING PAIN
248	(a) The Legislature finds that there is a compelling state
249	interest in protecting the lives of unborn children from the
250	stage at which substantial medical evidence indicates that such
251	unborn children are capable of feeling pain. Such compelling
252	interest is separate from and independent of this state's
253	compelling interest in protecting the lives of unborn children
254	from the stage of viability, and neither compelling interest is
255	intended to replace the other.
256	(b) A person may not perform or induce, or attempt to
257	perform or induce, an abortion of an unborn child capable of
258	feeling pain unless it is necessary to prevent a serious health
259	risk to the unborn child's mother.
260	(c) An unborn child is deemed capable of feeling pain if it
261	has been determined by the physician performing or inducing, or

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262	attempting to perform or induce, an abortion of the unborn
263	child, or by another physician upon whose determination such
264	physician relies, that the probable gestational age of the
265	unborn child is 20 or more weeks. For purposes of this
266	subsection, a dead unborn child is not capable of feeling pain.
267	(d) Except in a medical emergency or in the removal of a
268	dead unborn child, an abortion may not be performed or induced,
269	or be attempted to be performed or induced, unless the physician
270	performing or inducing, or attempting to perform or induce, the
271	abortion has first made a determination of the probable
272	gestational age of the unborn child or relied upon such a
273	determination made by another physician. In making this
274	determination, the physician shall inquire of the unborn child's
275	mother and perform or cause to be performed such medical
276	examinations and tests as a reasonably prudent physician,
277	knowledgeable about the case and the medical conditions
278	involved, would consider necessary in making an accurate
279	determination of the probable gestational age of the unborn
280	child.
281	(e) When an abortion of an unborn child capable of feeling
282	pain is necessary to prevent a serious health risk to the unborn
283	child's mother, the physician shall terminate the pregnancy
284	through or by the method that, using reasonable medical
285	judgment, provides the best opportunity for the unborn child to
286	survive, unless, using reasonable medical judgment, termination
287	of the pregnancy in that manner would pose a more serious health
288	risk to the unborn child's mother than would other available
289	methods. Such a determination may not be made if the
290	determination is based on a claim or diagnosis that the unborn
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291	child's mother will engage in conduct that she intends to result
292	in her death or in the substantial and irreversible physical
293	impairment of one or more of her major bodily functions.
294	(4) REPORTING
295	(a) Beginning January 1, 2022, a physician who performs or
296	induces, or attempts to perform or induce, an abortion shall
297	report all of the following to the department on forms, and in
298	accordance with schedules and other requirements, adopted by
299	department rule:
300	1. The probable gestational age of the unborn child and
301	whether an ultrasound was employed in making the determination
302	and, if a determination of probable gestational age was not
303	made, the basis of the determination that a medical emergency
304	existed or a determination that the unborn child was dead;
305	2. The method of abortion, including, but not limited to,
306	one or more of the following, by or through which the abortion
307	was performed or induced:
308	a. Medication, including, but not limited to, an abortion
309	induced by mifepristone/misoprostol or methotrexate/misoprostol;
310	b. Manual vacuum aspiration;
311	c. Electrical vacuum aspiration;
312	d. Dilation and evacuation;
313	e. Induction, combined with dilation and evacuation;
314	f. Induction with prostaglandins;
315	g. Induction with intra-amniotic instillation, including,
316	but not limited to, saline or urea; or
317	h. Intact dilation and extraction, otherwise known as
318	partial birth;
319	3. Whether an intra-fetal injection, including, but not

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320limited to, intra-fetal potassium chloride or digoxin, was used321in an attempt to induce the death of the unborn child;3224. The age and race of the unborn child's mother;3235. If the unborn child was deemed capable of experiencing324pain under paragraph (3) (c), the basis of the determination that325the pregnancy was a serious health risk to the unborn child's326mother; and3276. If the unborn child was deemed capable of experiencing328pain under paragraph (3) (c), whether the method of abortion used329was the method that, using reasonable medical judgment, provided331such method was not used, the basis of the determination that332termination of the pregnancy using that method would pose a more333serious health risk to the unborn child's mother than would344other available methods.355(b) A report required by paragraph (a) may not contain the376name or the address of the woman whose pregnancy was terminated377and may not contain any other information identifying the woman378whose pregnancy was terminated.379(c) Beginning on June 30, 2022, and each June 30381thereafter, the department shall publish, in paper form and on382its website, a summary providing statistics for the previous383calendar year compiled from all of the reports made pursuant to384thereafter, the department shall publish, in paper form and on385its website, a summary providing statistics for the previous <th></th> <th>39-01015-21 2021744</th>		39-01015-21 2021744
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	346	paragraph (a) for that year. The summary must provide a
348 (a) to be reported and include each of the summaries from all	347	tabulation of data for all of the items required by paragraph
	348	(a) to be reported and include each of the summaries from all

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349	previous calendar years for which reports have been filed,
350	adjusted to reflect any additional data from late-filed reports
351	or corrected reports. All reports must include the name of the
352	physician who performs or induces, or attempts to perform or
353	induce, the abortion and the name of the facility in which the
354	abortion was performed, induced, or attempted to be performed or
355	induced. The department shall ensure that the information
356	included in the summary cannot reasonably lead to the
357	identification of a pregnant woman upon whom an abortion was
358	performed, induced, or attempted.
359	(d) The department may assess upon a physician who fails to
360	submit a report required by this subsection by the end of the
361	30th day after the due date established by department rule a
362	late penalty of \$1,000 for each 30-day period or portion thereof
363	that a report is overdue. If a physician has failed to submit
364	such a report or has submitted an incomplete report more than 6
365	months after the due date, the department may bring an action
366	against the physician requesting a court of competent
367	jurisdiction to order the physician to submit a complete report
368	within a specified timeframe or be subject to civil contempt.
369	The intentional or reckless failure by a physician to comply
370	with this section, other than the late filing of a report or the
371	intentional or reckless failure by a physician to submit a
372	complete report in accordance with a court order, constitutes
373	unprofessional conduct and is grounds for disciplinary action
374	pursuant to s. 458.331 or s. 459.015, as applicable. A physician
375	who intentionally or recklessly falsifies a report required
376	under this section commits a misdemeanor of the first degree,
377	punishable as provided in s. 775.082 or s. 775.083.

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 (5) RULEMAKING.—The department shall adopt rules, including forms for the reports required under subsection (4), as necessary to implement this section, by January 1, 2022. (6) CRIMINAL FENALTIES.—A person who intentionally or recklessly performs or induces, or attempts to perform or induce, an abortion in violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A penalty may not be assessed against the woman upon whom an abortion is performed or induced. (7) CIVIL REMEDIES.— (a) A woman upon whom an abortion has been performed or induced in intentional or reckless violation of this section, or the father of an unborn child aborted in intentional or reckless violation of this section, may maintain a civil action for actual and punitive damages against the person who performed or induced the abortion. A woman upon whom an abortion has been attempted in intentional or reckless violation of this section may maintain a civil action for actual and punitive damages against the person who attempted to perform or induce the abortion. (b) An injunction may be obtained against a person who has intentionally or recklessly violated this section. A cause of action for injunctive relief against a person who has intentionally or recklessly violated this section may be 		39-01015-21 2021744
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405 intentionally or recklessly violated this section may be	403	induce, further abortions in violation of this section. A cause
	404	of action for injunctive relief against a person who has
406 maintained by one or more of the following:	405	intentionally or recklessly violated this section may be
	406	maintained by one or more of the following:

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407	1. The woman upon whom an abortion was performed or
408	induced, or upon whom an abortion was attempted to be performed
409	or induced, in violation of this section;
410	2. The spouse, parent, sibling, or guardian of, or a
411	current or former licensed health care provider of, the woman
412	upon whom an abortion was performed or induced, or upon whom an
413	abortion was attempted to be performed or induced, in violation
414	of this section;
415	3. A state attorney with appropriate jurisdiction; or
416	4. The Office of the Attorney General.
417	(c) If a judgment is entered in favor of the plaintiff in
418	an action brought under this section, the court shall award
419	reasonable attorney fees to the plaintiff.
420	(d) If a judgment is entered in favor of the defendant in
421	an action brought under this section and the court finds that
422	the plaintiff's suit was frivolous and brought in bad faith, the
423	court shall award reasonable attorney fees to the defendant.
424	(e) Damages or attorney fees may not be assessed against a
425	woman upon whom an abortion was performed or induced, or upon
426	whom an abortion was attempted to be performed or induced,
427	except in accordance with paragraph (d).
428	(8) PROTECTION OF PRIVACY IN COURT PROCEEDINGSIn each
429	civil or criminal proceeding or action brought under this
430	section, if a woman upon whom an abortion has been performed or
431	induced, or upon whom an abortion has been attempted to be
432	performed or induced, does not give her consent to such
433	disclosure, the court must rule on whether the anonymity of the
434	woman must be preserved from public disclosure. The court, upon
435	its own motion or the motion of a party, shall make such a

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436	ruling and, if it determines that anonymity should be preserved,
437	shall issue an order to preserve the woman's anonymity to the
438	parties, witnesses, and counsel and shall direct the sealing of
439	the record and the exclusion of individuals from courtrooms or
440	hearing rooms to the extent necessary to safeguard the woman's
441	identity from public disclosure. Each such order must be
442	accompanied by specific written findings explaining why the
443	anonymity of the woman should be preserved; why the order is
444	essential to that end; how the order is narrowly tailored to
445	serve that interest; and why a reasonable, less restrictive
446	alternative does not exist. In the absence of the written
447	consent of the woman upon whom an abortion has been performed or
448	induced or upon whom an abortion has been attempted to be
449	performed or induced, anyone, other than a public official, who
450	brings an action under paragraph (7)(a) or paragraph (7)(b)
451	shall do so under a pseudonym. This section may not be construed
452	
452	to conceal the identity of the plaintiff or any witness from the
	defendant or from attorneys for the defendant.
454	(9) CONSTRUCTIONThis section may not be construed to
455	repeal, by implication or otherwise, s. 390.01112 or any other
456	applicable provision of state law regulating or restricting
457	abortion. An abortion that complies with this section but
458	violates s. 390.01112 or any other applicable provision of state
459	law is deemed unlawful. An abortion that complies with s.
460	390.01112 or any other state law regulating or restricting
461	abortion but violates this section is deemed unlawful. If this
462	act, or any portion thereof, is temporarily or permanently
463	restrained or enjoined by judicial order, all other state laws
464	regulating or restricting abortion must be enforced as though

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465	the restrained or enjoined provisions had not been adopted;
466	however, if such temporary or permanent restraining order or
467	injunction is stayed or dissolved or otherwise ceases to have
468	effect, such provisions must be given full force and effect.
469	Section 3. This act shall take effect July 1, 2021.