A bill to be entitled
An act relating to abortion; providing a short title;
amending s. 390.011, F.S.; providing and revising
definitions; amending s. 390.0111, F.S.; requiring a
physician to conduct a test for, and inform a woman
seeking an abortion of, the presence of a detectable
fetal heartbeat; amending s. 390.01112, F.S.;
conforming provisions to changes made by the act;
creating s. 390.01113, F.S.; defining the term
"standard medical practice"; requiring a physician to
determine whether an unborn child has a detectable
fetal heartbeat before performing or inducing an
abortion; providing requirements for such
determination; requiring that the physician record
specified information in the pregnant woman's medical
record; prohibiting a physician from knowingly
performing or inducing an abortion if the physician
detects a fetal heartbeat for an unborn child or fails
to conduct a test to detect a fetal heartbeat;
providing exceptions; providing certain requirements
relating to documentation for physicians who believe a
medical emergency exists; providing for private civil
enforcement; prohibiting enforcement by certain
persons and entities; providing construction; creating
s. 390.01119, F.S.; requiring that a physician
maintain certain written documentation under certain circumstances; requiring that such documentation include specified information; amending s. 390.012, F.S.; requiring that the Agency for Health Care Administration adopt certain rules; creating s. 390.027, F.S.; providing for a civil cause of action for violations of ch. 390, F.S., under certain circumstances; providing for civil remedies and damages; providing a certain exception; limiting the period during which a cause of action may be brought; providing venue; providing for an affirmative defense; providing a burden of proof for such defense; providing that a defendant does not have standing to assert the rights of women seeking an abortion as a defense; providing exceptions; providing that an affirmative defense is not available under certain circumstances; prohibiting a court from finding an undue burden under certain circumstances; prohibiting certain entities and persons from intervening in certain civil actions; authorizing such entities and persons to file amicus curiae briefs in such actions; prohibiting the award of attorney fees or costs to a defendant in certain civil actions; providing construction; creating s. 390.028, F.S.; providing that certain entities and persons are liable to pay
attorney fees and costs to the prevailing party in actions challenging abortion laws; providing construction for abortion laws; providing for severability; providing that the state, a political subdivision, and each officer and employee of the state or a political subdivision have certain immunities in any action challenging abortion laws; providing construction; providing legislative intent; providing requirements for severability; prohibiting a court from declining to enforce the severability requirements; requiring the Department of Health or the Agency for Health Care Administration, as applicable, to adopt rules enforcing such requirements and issue notice of the rules within a specified period under certain circumstances; authorizing a person to petition for a writ of mandamus requiring the department or agency, as applicable, to adopt rules if either fails to adopt the rules and issue notice; providing an effective date.

WHEREAS, a fetal heartbeat is a key medical predictor that an unborn child will reach live birth, and

WHEREAS, cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac, and
WHEREAS, the State of Florida has a compelling interest from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child, and
WHEREAS, in order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based upon the presence of cardiac activity,

NOW, THEREFORE,

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

Section 1. This act may be cited as the "Florida Heartbeat Act."

Section 2. Section 390.011, Florida Statutes, is amended to read:

390.011 Definitions.—As used in this chapter, the term:
(1) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead unborn child fetus.
(2) "Abortion clinic" or "clinic" means any facility in which abortions are performed. The term does not include:
   (a) A hospital; or
   (b) A physician's office, provided that the office is not used primarily for the performance of abortions.
(3) "Agency" means the Agency for Health Care
Administration.

(4) "Born alive" means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, caesarean section, induced abortion, or other method.

(5) "Department" means the Department of Health.

(6) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(7) "Gestation" means the development of a human embryo or an unborn child fetus between fertilization and birth.

(8) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

(9) "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(10) "Hospital" means a facility as defined in s. 395.002(13) and licensed under chapter 395 and part II of chapter 408.

(11) "Partial-birth abortion" means a termination of
pregnancy in which the physician performing the termination of pregnancy partially vaginally delivers a living unborn child fetus before killing the unborn child fetus and completing the delivery.

(12) "Physician" means a physician licensed under chapter 458 or chapter 459 or a physician practicing medicine or osteopathic medicine in the employment of the United States.

(13) "Pregnancy" means the human female reproductive condition that:

(a) Begins with fertilization.

(b) Occurs when the woman is carrying a developing human offspring.

(c) Is calculated from the first day of the woman's last menstrual period.

(14) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(15) "Standard medical measure" means the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, with an obstetrical department, to preserve the life and health of the unborn child fetus, with or without temporary artificial life-sustaining support, if the unborn child fetus
were born at the same stage of gestational fetal development.

(16)(12) "Trimester" means one of the following three distinct periods of time in the duration of a pregnancy:

(a) "First trimester," which is the period of time from fertilization through the end of the 11th week of gestation.

(b) "Second trimester," which is the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation.

(c) "Third trimester," which is the period of time from the beginning of the 24th week of gestation through birth.

(17) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

(18)(13) "Viable" or "viability" means the stage of fetal development when the life of an unborn child a fetus is sustainable outside the womb through standard medical measures.

Section 3. Paragraph (a) of subsection (3), subsections (4), (6), and (7), paragraph (a) of subsection (11), and paragraph (a) of subsection (15) of section 390.0111, Florida Statutes, are amended to read:

390.0111 Termination of pregnancies.—

(3) CONSENTS REQUIRED.—A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.
(a) Except in the case of a medical emergency, consent to a termination of pregnancy is voluntary and informed only if:

1. The physician who is to perform the procedure, or the referring physician, has, at a minimum, orally, while physically present in the same room, and at least 24 hours before the procedure, informed the woman of:

   a. 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.

   b. The probable gestational age of the unborn child, verified by an ultrasound, at the time the termination of pregnancy is to be performed.

   (I) The ultrasound must be performed by the physician who is to perform the abortion or by a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed by rule and who is working in conjunction with the physician.

   (II) The person performing the ultrasound must offer the woman the opportunity to view the live ultrasound images and hear an explanation of them. If the woman accepts the opportunity to view the images and hear the explanation, a physician or a registered nurse, licensed practical nurse, advanced practice registered nurse, or physician assistant working in conjunction with the physician must contemporaneously
review and explain the images to the woman before the woman gives informed consent to having an abortion procedure performed.

(III) The woman has a right to decline to view and hear the explanation of the live ultrasound images after she is informed of her right and offered an opportunity to view the images and hear the explanation. If the woman declines, the woman shall complete a form acknowledging that she was offered an opportunity to view and hear the explanation of the images but that she declined that opportunity. The form must also indicate that the woman’s decision was not based on any undue influence from any person to discourage her from viewing the images or hearing the explanation and that she declined of her own free will.

(IV) Unless requested by the woman, the person performing the ultrasound may not offer the opportunity to view the images and hear the explanation and the explanation may not be given if, at the time the woman schedules or arrives for her appointment to obtain an abortion, a copy of a restraining order, police report, medical record, or other court order or documentation is presented which provides evidence that the woman is obtaining the abortion because the woman is a victim of rape, incest, domestic violence, or human trafficking or 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 irreversible impairment
of a major bodily function if the woman delayed terminating her
pregnancy.

   c. Whether the unborn child has a detectable fetal
   heartbeat. The physician who is to perform or induce the
   abortion must also conduct a test for the presence of a fetal
   heartbeat and inform the woman in writing of the statistical
   probability of bringing the unborn child to term to the best of
   the physician's knowledge, based on the gestational age of the
   unborn child, or as prescribed by rule.

   d. The medical risks to the woman and the unborn child
   fetus of carrying the pregnancy to term.

   The physician may provide the information required in this
   subparagraph within 24 hours before the procedure if requested
   by the woman at the time she schedules or arrives for her
   appointment to obtain an abortion and if she presents to the
   physician a copy of a restraining order, police report, medical
   record, or other court order or documentation evidencing that
   she is obtaining the abortion because she is a victim of rape,
   incest, domestic violence, or human trafficking.

2. Printed materials prepared and provided by the
department have been provided to the pregnant woman, if she
chooses to view these materials, including:

   a. A description of the unborn child fetus, including a
description of the various stages of development.

   b. A list of entities that offer alternatives to
   terminating the pregnancy.

   c. Detailed information on the availability of medical
   assistance benefits for prenatal care, childbirth, and neonatal
   care.

   3. The woman acknowledges in writing, before the
   termination of pregnancy, that the information required to be
   provided under this subsection has been provided.

Nothing in this paragraph is intended to prohibit a physician
from providing any additional information which the physician
deems material to the woman's informed decision to terminate her
pregnancy.

(4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD
TRIMESTER.—If a termination of pregnancy is performed in the
third trimester, the physician performing the termination of
pregnancy must exercise the same degree of professional skill,
care, and diligence to preserve the life and health of the
unborn child fetus which the physician would be required to
exercise in order to preserve the life and health of an unborn
child a fetus intended to be born and not aborted. However, if
preserving the life and health of the unborn child fetus
conflicts with preserving the life and health of the pregnant
woman, the physician must consider preserving the woman's life

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and health the overriding and superior concern.

(6) EXPERIMENTATION ON UNBORN CHILD FETUS PROHIBITED;

EXCEPTION.—No person may not use any live unborn child fetus or live, premature infant for any type of scientific, research, laboratory, or other kind of experimentation either before or after any termination of pregnancy procedure except as necessary to protect or preserve the life and health of such unborn child fetus or premature infant.

(7) FETAL REMAINS OF AN UNBORN CHILD.—The fetal remains of an unborn child shall be disposed of in a sanitary manner pursuant to s. 381.0098 and rules adopted thereunder. Failure to dispose of such fetal remains in accordance with this subsection is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION; RELIEF.—

(a) The father, if married to the mother at the time she receives a partial-birth abortion, and, if the mother has not attained the age of 18 years at the time she receives a partial-birth abortion, the maternal grandparents of the unborn child fetus may, in a civil action, obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a
local governmental entity, or a managed care plan providing
services under part IV of chapter 409 may not expend funds for
the benefit of, pay funds to, or initiate or renew a contract
with an organization that owns, operates, or is affiliated with
one or more clinics that are licensed under this chapter and
perform abortions unless one or more of the following applies:

(a) All abortions performed by such clinics are:

1. On unborn children fetuses that are conceived through
rape or incest; or

2. Are medically necessary to preserve the life of the
pregnant woman or to avert a serious risk of substantial and
irreversible physical impairment of a major bodily function of
the pregnant woman, other than a psychological condition.

Section 4. Section 390.01112, Florida Statutes, is amended
to read:

390.01112 Termination of pregnancies during viability.—
(1) A termination of pregnancy may not shall be
performed on any human being if the physician determines that,
in reasonable medical judgment, the unborn child fetus has
achieved viability, unless:

(a) Two physicians certify in writing that, in reasonable
medical judgment, the termination of the pregnancy is necessary
to save the pregnant woman's life or avert a serious risk of
substantial and irreversible physical impairment of a major
bodily function of the pregnant woman other than a psychological

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condition; or

(b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(2) Before performing a termination of pregnancy, a physician must determine if the unborn child fetus is viable by, at a minimum, performing a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound required under s. 390.0111(3), an examination of the unborn child fetus. The physician must document in the pregnant woman's medical file the physician's determination and the method, equipment, fetal measurements of the unborn child, and any other information used to determine the viability of the unborn child fetus.

(3) If a termination of pregnancy is performed during viability, the physician performing the termination of pregnancy must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the unborn child fetus that the physician would be required to exercise in order to preserve the life and health of an unborn child a fetus.
intended to be born and not aborted. However, if preserving the
life and health of the unborn child conflicts with
preserving the life and health of the woman, the physician must
consider preserving the woman's life and health the overriding
and superior concern.

Section 5. Section 390.01113, Florida Statutes, is created
to read:

390.01113 Termination of pregnancies after detection of
fetal heartbeat prohibited; exception; enforceability;
construction.—

(1) For the purposes of determining the presence of a
fetal heartbeat under this section, the term "standard medical
practice" means employing the appropriate means of detecting the
heartbeat based on the estimated gestational age of the unborn
child and the condition of the woman and her pregnancy.

(2) Except as provided in subsection (6), a physician may
not knowingly perform or induce an abortion on a pregnant woman
unless the physician has determined, in accordance with this
section, whether the woman's unborn child has a detectable fetal
heartbeat.

(3) In making a determination under this section, the
physician must use a test that is:

(a) Consistent with the physician's good faith and
reasonable understanding of standard medical practice.

(b) Appropriate for the estimated gestational age of the
unborn child and the condition of the woman and her pregnancy.

(4) A physician making a determination under this section shall record all of the following in the pregnant woman's medical record:

(a) Estimated gestational age of the unborn child.
(b) Method used to estimate the gestational age.
(c) Test used for detecting a fetal heartbeat, including the date, time, and results of the test.

(5)(a) Except as provided in subsection (6), a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required in this section or failed to conduct a test to detect a fetal heartbeat.
(b) A physician does not violate this section if the physician conducted a test for a fetal heartbeat and did not detect a fetal heartbeat.
(c) This subsection does not affect:
   1. The provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or
   2. Any other provision of general law that regulates or prohibits abortion.

(6)(a) Subsection (5) does not apply if a physician believes a medical emergency exists that prevents compliance with this section.
(b) A physician who performs or induces an abortion when a medical emergency exists shall make written notations in the pregnant woman's medical record of all of the following:

1. The physician's belief that a medical emergency necessitated the abortion.

2. The medical condition of the pregnant woman that prevented compliance with this section.

(c) A physician performing or inducing an abortion under the circumstances described in paragraph (a) shall maintain in the physician's practice records a copy of the notations made under paragraph (b).

(7)(a) The requirements of this section shall be enforced exclusively through the private civil enforcement actions provided in s. 390.027. Enforcement of the requirements of this section in response to violations of such requirements may not be taken or threatened by the state, a political subdivision, a state attorney, or an executive or administrative officer or employee of the state or a political subdivision against any person, except as provided in s. 390.027.

(b) Paragraph (a) may not be construed to:

1. Legalize the conduct prohibited by this section;

2. Limit in any way or affect the availability of a remedy established under s. 390.027; or

3. Limit the enforceability of any other laws that regulate or prohibit abortion.
(8) This section may not be construed to:

(a) Create or recognize a right to abortion before a fetal heartbeat is detected;

(b) Authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this section;

(c) Wholly or partly repeal, either expressly or by implication, any other provision of law that regulates or prohibits abortion; or

(d) Restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as general law.

Section 6. Section 390.01119, Florida Statutes, is created to read:

390.01119 Medical emergencies; documentation required.—When an abortion is performed or induced on a pregnant woman because of a medical emergency under s. 390.01113(6), the physician who performs or induces the abortion shall certify in writing that the abortion is necessary due to a medical emergency and specify the woman's medical condition requiring the abortion.

(1) A physician who performs or induces an abortion on a pregnant woman shall:

(a) When the abortion is performed or induced to preserve the health of the pregnant woman, include all of the following
in a written document:

1. The specific medical condition the abortion is asserted to address.

2. The medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition.

(b) For an abortion other than an abortion described in paragraph (a), specify in a written document that maternal health is not a purpose of the abortion.

(2) A physician shall place the written document required in this section in the pregnant woman's medical record and maintain a copy of the document in the physician's practice records.

Section 7. Section 390.012, Florida Statutes, is amended to read:

390.012 Powers of agency; rules; disposal of fetal remains of an unborn child.—

(1) The agency may develop and enforce rules pursuant to ss. 390.011-390.018 and part II of chapter 408 for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics.

(a) The rules shall be reasonably related to the preservation of maternal health of the clients.

(b) The rules shall be in accordance with s. 797.03 and may not impose an unconstitutional burden on a woman's freedom to decide whether to terminate her pregnancy.
(c) The rules shall provide for:

1. The performance of pregnancy termination procedures only by a licensed physician.

2. The making, protection, and preservation of patient records, which shall be treated as medical records under chapter 458. When performing a license inspection of a clinic, the agency shall inspect at least 50 percent of patient records generated since the clinic's last license inspection.

3. Annual inspections by the agency of all clinics licensed under this chapter to ensure that such clinics are in compliance with this chapter and agency rules.

4. The prompt investigation of credible allegations of abortions being performed at a clinic that is not licensed to perform such procedures.

(2) For clinics that perform abortions in the first trimester of pregnancy only, these rules must be comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions and must require:

(a) Clinics to have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by the clinic and the treating physician to the licensed hospital; or

(b) Physicians who perform abortions at the clinic to have

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admitting privileges at a hospital within reasonable proximity to the clinic.

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(a) Rules for an abortion clinic's physical facilities. At a minimum, these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling, and medical evaluations.
2. Dressing rooms for staff and patients.
3. Appropriate lavatory areas.
4. Areas for preprocedure hand washing.
5. Private procedure rooms.
6. Adequate lighting and ventilation for abortion procedures.
7. Surgical or gynecological examination tables and other fixed equipment.
8. Postprocedure recovery rooms that are equipped to meet the patients' needs.
9. Emergency exits to accommodate a stretcher or gurney.
10. Areas for cleaning and sterilizing instruments.
11. Adequate areas for the secure storage of medical records and necessary equipment and supplies.
12. The display in the abortion clinic, in a place that is...
conspicuous to all patients, of the clinic's current license issued by the agency.

(b) Rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum, these rules shall:

1. Prescribe required clean and sterilized equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.

2. Prescribe required equipment, supplies, and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.

3. Prescribe equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment or equipment operated by clinic staff at the abortion clinic.

4. Require ultrasound equipment.

5. Require that all equipment is safe for the patient and the staff, meets applicable federal standards, and is checked annually to ensure safety and appropriate calibration.
(c) Rules relating to abortion clinic personnel. At a minimum, these rules shall require that:

1. The abortion clinic designate a medical director who is licensed to practice medicine in this state, and all physicians who perform abortions in the clinic have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient’s medical records held by both the clinic and the treating physician.

2. If a physician is not present after an abortion is performed, a registered nurse, licensed practical nurse, advanced practice registered nurse, or physician assistant be present and remain at the clinic to provide postoperative monitoring and care until the patient is discharged.

3. Surgical assistants receive training in counseling, patient advocacy, and the specific responsibilities associated with the services the surgical assistants provide.

4. Volunteers receive training in the specific responsibilities associated with the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

(d) Rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum, these rules shall
require:

1. A medical history including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:
   a. Urine or blood tests for pregnancy performed before the abortion procedure.
   b. A test for anemia.
   c. Rh typing, unless reliable written documentation of blood type is available.
   d. Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed in rule. The rules shall require clinics to be in compliance with s. 390.0111.

5. That the physician is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of the gestational fetal age of the unborn child as defined in rule and shall write the estimate in the patient's medical history. The
physician shall keep original prints of each ultrasound
examination of a patient in the patient's medical history file.

6. That a physician is responsible for determining whether
an unborn child has a detectable fetal heartbeat by conducting a
test that is consistent with the physician's good faith and
reasonable understanding of standard medical practice and that
is appropriate for the estimated gestational age of the unborn
child as defined in rule and the condition of the woman and her
pregnancy.

(e) Rules relating to the abortion procedure. At a
minimum, these rules shall require:

1. That a physician, registered nurse, licensed practical
nurse, advanced practice registered nurse, or physician
assistant is available to all patients throughout the abortion
procedure.

2. Standards for the safe conduct of abortion procedures
that conform to obstetric standards in keeping with established
standards of care regarding the estimation of the gestational
fetal age of the unborn child as defined in rule.

3. Appropriate use of general and local anesthesia,
algesia, and sedation if ordered by the physician.

4. Appropriate precautions, such as the establishment of
intravenous access at least for patients undergoing post-first
trimester abortions.

5. Appropriate monitoring of the vital signs and other
defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

(f) Rules that prescribe minimum recovery room standards. At a minimum, these rules must require that:

1. Postprocedure recovery rooms be supervised and staffed to meet the patients' needs.

2. Immediate postprocedure care consist of observation in a supervised recovery room for as long as the patient's condition warrants.

3. A registered nurse, licensed practical nurse, advanced practice registered nurse, or physician assistant who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remain on the premises of the abortion clinic until all patients are discharged.

4. A physician sign the discharge order and be readily accessible and available until the last patient is discharged to facilitate the transfer of emergency cases if hospitalization of the patient or the unborn child viable fetus is necessary.

5. A physician discuss Rho(D) immune globulin with each patient for whom it is indicated and ensure that it is offered to the patient in the immediate postoperative period or will be available to her within 72 hours after completion of the abortion procedure. If the patient refuses the Rho(D) immune
globulin, she and a witness must sign a refusal form approved by the agency which must be included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems, and general aftercare which are specific to the patient be given to each patient. The instructions must include information regarding access to medical care for complications, including a telephone number for use in the event of a medical emergency.

7. A minimum length of time be specified, by type of abortion procedure and duration of gestation, during which a patient must remain in the recovery room.

8. The physician ensure that, with the patient's consent, a registered nurse, licensed practical nurse, advanced practice registered nurse, or physician assistant from the abortion clinic makes a good faith effort to contact the patient by telephone within 24 hours after surgery to assess the patient's recovery.

9. Equipment and services be readily accessible to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or the unborn child viable fetus to the hospital.

(g) Rules that prescribe standards for followup care. At a minimum, these rules shall require that:

1. A postabortion medical visit that includes a medical examination and a review of the results of all laboratory tests
is offered.

2. A urine pregnancy test is obtained at the time of the followup visit to rule out continuing pregnancy.

3. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

(h) Rules to prescribe minimum abortion clinic incident reporting. At a minimum, these rules shall require that:

1. The abortion clinic records each incident that results in serious injury to a patient or an unborn child a viable fetus at an abortion clinic and shall report an incident in writing to the agency within 10 days after the incident occurs. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major bodily organ.

2. If a patient's death occurs, other than the death of an unborn child properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department workday.

(4) The rules adopted pursuant to this section shall not limit the ability of a physician to advise a patient on any health issue.

(5) The provisions of this section and the rules adopted pursuant hereto shall be in addition to any other laws, rules, and regulations which are applicable to facilities defined as
abortion clinics under this section.

(6) The agency may adopt and enforce rules, in the interest of protecting the public health, to ensure the prompt and proper disposal of fetal remains and tissue of an unborn child resulting from pregnancy termination.

(7) If an owner, operator, or employee of an abortion clinic fails to dispose of fetal remains and tissue of an unborn child in a sanitary manner pursuant to s. 381.0098, rules adopted thereunder, and rules adopted by the agency pursuant to this section, the license of such clinic may be suspended or revoked, and such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Beginning February 1, 2017, and annually thereafter, the agency shall submit a report to the President of the Senate and the Speaker of the House of Representatives which summarizes all regulatory actions taken during the prior year by the agency under this chapter.

Section 8. Section 390.027, Florida Statutes, is created to read:

390.027 Civil liability for violation or aiding or abetting violation.—

(1) A person, other than an officer or employee of a state or local governmental entity, may bring a civil action against a person who:

(a) Performs or induces an abortion in violation of this
chapter; or
(b) Knowingly engages in conduct that aids or abets the
performance or inducement of an abortion, including, but not
limited to, paying for or reimbursing the costs of an abortion
through insurance or otherwise, if the abortion is performed or
induced in violation of this chapter, regardless of whether the
person knew or should have known that the abortion would be
performed or induced in violation of this chapter.

(2) If a claimant prevails in an action brought under this
section, the court shall award all of the following:
(a) Injunctive relief sufficient to prevent the defendant
from violating this chapter or engaging in acts that aid or abet
violations of this chapter.
(b) Damages in an amount of at least $10,000 for each
abortion that the defendant performed or induced in violation of
this chapter, and for each abortion performed or induced in
violation of this chapter which the defendant aided or abetted.
(c) Attorney fees and costs.

(3) Notwithstanding subsection (2), a court may not award
relief under this section if a defendant demonstrates that the
defendant paid damages in a previous action for that particular
abortion performed or induced in violation of this chapter, or
for the particular conduct that aided or abetted an abortion
performed or induced in violation of this chapter.

(4) A person may bring an action under this section within
6 years after the cause of action has accrued.

(5) Notwithstanding any other law, a civil action brought under this section shall be brought in:

(a) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(b) The county of residence for any one of the defendants at the time the cause of action accrued;

(c) The county of the principal office in the state of any one of the defendants that is not a natural person; or

(d) The county of residence for the claimant if the claimant is a natural person residing in the state.

(6) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(a) Ignorance or mistake of law.

(b) A defendant's belief that the requirements of this chapter are unconstitutional or were unconstitutional.

(c) A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violated this chapter.

(d) A defendant's reliance on a state or federal court decision that is not binding on the court in which the action has been brought.

(e) Nonmutual issue preclusion or nonmutual claim preclusion.
(f) The consent of the unborn child's mother to the abortion.

(g) Except as provided in subsection (8), a claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

(7) It is an affirmative defense if a person sued under paragraph (1)(b) reasonably believed, after conducting a reasonable investigation, that the physician who performed or induced the abortion had complied or would comply with this chapter. The defendant has the burden of proving the affirmative defense by a preponderance of the evidence.

(8)(a) A defendant against whom an action is brought under this section only has standing to assert the rights of women seeking an abortion as a defense to liability if:

1. The United States Supreme Court holds that the state courts must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

2. The defendant is an abortion provider, an employee of an abortion provider, or a physician who performs abortions.

(b)1. A defendant in an action brought under this section may assert an affirmative defense to liability only if all of the following apply:

a. The defendant has standing to assert the third-party
rights of women seeking abortions in accordance with paragraph (a).

b. The defendant demonstrates that the relief sought by the claimant will impose an undue burden on women seeking an abortion.

2. The affirmative defense is not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based occurred before the United States Supreme Court overruled either of those decisions.

(c) A court may only find an undue burden under paragraph (b) if the defendant introduces evidence proving that:

1. An award of relief will prevent an identifiable woman or an identifiable group of women from obtaining an abortion; or

2. An award of relief will place a substantial obstacle in the path of an identifiable woman or an identifiable group of women who are seeking an abortion.

(d) A defendant may not establish an undue burden under this subsection by:

1. Merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

2. Arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants
will impose an undue burden on women seeking an abortion.

(9) Notwithstanding any other law, the state, a state official, or a state attorney may not intervene in an action brought under this section. However, the state, a state official, or a state attorney is not prohibited from filing an amicus curiae brief in such action.

(10) Notwithstanding any other law, a court may not award attorney fees or costs under the Florida Rules of Civil Procedure or any other rule adopted by the Supreme Court to a defendant in an action brought under this section.

(11) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by s. 4, Art. I of the State Constitution.

Section 9. Section 390.028, Florida Statutes, is created to read:

390.028 Award of attorney fees in actions challenging abortion laws.—

(1) Notwithstanding any other law, a person, including an entity, an attorney, or a law firm, who seeks declaratory or injunctive relief to prevent the state, a political subdivision thereof, or a governmental entity or public official in the state from enforcing any statute, ordinance, rule, regulation,
or any other type of law that regulates or restricts abortion or
that limits taxpayer funding for individuals or entities that
perform or promote abortions, in any state or federal court, or
that represents any litigant seeking such relief in a state or
federal court, is jointly and severally liable to pay the
attorney fees and costs of the prevailing party.

(2) For purposes of this section, a party is considered a
prevailing party if a state or federal court:

(a) Dismisses any claim or cause of action brought against
the party which seeks the declaratory or injunctive relief
described in subsection (1), regardless of the reason for the
dismissal; or

(b) Enters judgment in the party's favor on any such claim
or cause of action.

(3) Regardless of whether a prevailing party sought to
recover attorney fees or costs in the underlying action, a
prevailing party under this section may bring a civil action to
recover attorney fees or costs against a person, including an
entity, an attorney, or a law firm, which sought declaratory or
injunctive relief described in subsection (1) within 3 years
after the date on which, as applicable:

(a) The dismissal or judgment described in subsection (2)
becomes final on the conclusion of appellate review; or

(b) The time for seeking appellate review expires.

(4) It is not a defense to an action brought under
subsection (3) that:

(a) A prevailing party under this section failed to seek recovery of attorney fees or costs in the underlying action; or
(b) The court in the underlying action declined to recognize or enforce the requirements of this section.

Section 10. (1) Any law that regulates or prohibits abortion may not be construed to repeal any other law that regulates or prohibits abortion, either wholly or partly, unless the repealing law explicitly states that it is repealing the other law.

(2) A law may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as general law unless the law explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by general law.

(3) Every law that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any law that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, all applications of that law that do not violate the constitutional rights of women seeking abortions shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law.

Section 11. (1) The state has sovereign immunity, each
political subdivision thereof has governmental immunity, and
each officer and employee of the state or a political
subdivision has official immunity in any action, claim, or
counterclaim or any type of legal or equitable action that
challenges the validity of any provision or application of this
act, on constitutional grounds or otherwise.

(2) A provision of general law may not be construed to
waive or abrogate an immunity described in subsection (1) unless
it expressly waives immunity under this section.

(3) This section prevails over any conflicting law.

Section 12. (1) In light of Leavitt v. Jane L., 518 U.S.
137 (1996), in which in the context of determining the
severability of a state statute regulating abortion, the United
States Supreme Court held that an explicit statement of
legislative intent is controlling, it is the intent of the
Legislature that every provision, section, subsection, sentence,
clause, phrase, or word in this act, and every application of
the provisions in this act, are severable from each other.

(2) If any application of any provision in this act to any
person, group of persons, or circumstances is found by a court
to be invalid or unconstitutional, the remaining applications of
that provision to all other persons and circumstances shall be
severed and may not be affected. All constitutionally valid
applications of this act shall be severed from any applications
that a court finds to be invalid, leaving the valid applications
in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(3) The Legislature further declares that it would have enacted this act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this act, were to be declared unconstitutional or to represent an undue burden.

(4) If any provision of this act is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(5) A court may not decline to enforce the severability requirements of subsections (1) through (4) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to
enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(a) Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the State Constitution or the United States Constitution;

(b) Is not a formal amendment of the language in a statute; and

(c) No more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(6) If any federal or state court declares unconstitutional or enjoins the enforcement of a provision in this act and fails to enforce the severability requirements of subsections (1) through (5), the department or agency, as applicable, shall:

(a) Adopt rules that enforce the requirements in this act to the maximum possible extent while avoiding the constitutional problems or other problems identified by the federal or state court; and

(b) Issue notice of those rules, no later than 30 days after the date of the court ruling.

(7) If the department or agency, as applicable, fails to
adopt the rules and issue notice under subsection (6), a person
may petition for a writ of mandamus requiring the department or
agency, as applicable, to adopt the rules and issue notice.

Section 13. This act shall take effect July 1, 2022.