

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/HB 5

INTRODUCER: House Health Care Appropriations Subcommittee; and Representatives Grall, Persons-Mulicka, and others

SUBJECT: Reducing Fetal and Infant Mortality

DATE: February 18, 2022      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Sadberry</u>	<u>AP</u>	<u>Favorable</u>

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**I. Summary:**

CS/HB 5 amends several sections of law with the aim of reducing fetal and infant mortality. The bill adds a requirement to the Comprehensive Statewide Tobacco Education and Use Prevention Program to target information towards pregnant women and women who may become pregnant; requires the Department of Health (DOH) to contract with local Healthy Start coalitions to establish fetal and infant mortality review (FIMR) committees in all regions of the state and appropriates \$1,602,000 in recurring funds from the General Revenue Fund for Fiscal Year 2022-2023 to the DOH for this purpose; and requires all hospitals that provide birthing services to participate in at least two quality initiatives developed in collaboration with the Florida Perinatal Quality Collaborative (FPQC) within the University of South Florida College of Public Health.

The bill also amends several sections of law related to abortions.

The bill prohibits a physician from performing an abortion after the fetus has reached 15 weeks of gestational age and redefines the term “gestation” to measure this time period from the first day of the pregnant woman’s last menstrual period (LMP).<sup>1</sup> The bill applies current law exceptions to the 15-week ban for emergencies and to save the pregnant woman’s life or to prevent a serious risk of substantial and irreversible physical impairment of a major bodily function to the new prohibition. The bill also adds a new exception to the 15-week ban that applies if the fetus has a fatal fetal abnormality<sup>2</sup> and has not reached viability.

Additionally, the bill amends provisions related to reporting abortions to the Agency for Health Care Administration (AHCA). The bill requires the AHCA, the Board of Medicine (BOM), and

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<sup>1</sup> Generally, the first day of the LMP will be about two weeks earlier than the date of conception. See <https://www.betterhealth.vic.gov.au/health/healthyliving/baby-due-date> (last visited Feb. 16, 2022).

<sup>2</sup> “Fatal fetal abnormality” is defined in the bill to mean a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.

the Board of Osteopathic Medicine (BOOM) to adopt by rule a form for reporting abortions that provides specified information including information that is required to be reported under current law as well as the number of abortions performed and the number of drug regimens dispensed or prescribed for medical abortions.<sup>3</sup> Additionally, the bill specifies that, should a woman provide evidence of human trafficking under a specified exception in current law, human trafficking must be reported as a reason for the abortion.

The bill makes other technical and conforming changes.

The bill provides an effective date of July 1, 2022.

## II. Present Situation:

### Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.<sup>4</sup> The termination of a pregnancy must be performed by a physician<sup>5</sup> licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.<sup>6</sup>

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.<sup>7</sup>

Specifically, an abortion may not be lawfully performed in Florida after viability or within the third trimester unless 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 condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.<sup>8</sup> Additionally, an abortion may not be performed on a minor under the age of 18 without the consent of the minor's parent or guardian or without the minor obtaining authorization for the abortion from a court.<sup>9, 10</sup>

Sections 390.0111(4) and 390.01112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces

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<sup>3</sup> The bill defines "medical abortion" as the administration or use of an abortion-inducing drug to induce an abortion.

<sup>4</sup> Section 390.011(1), F.S.

<sup>5</sup> Section 390.0111(2), F.S.

<sup>6</sup> Section 390.011(9), F.S.

<sup>7</sup> Sections 390.011(11) and (12), F.S.

<sup>8</sup> Sections 390.0111(1) and 390.01112(1), F.S.

<sup>9</sup> Section 390.01114, F.S.

<sup>10</sup> It is of note that the requirement for parental consent, passed by the Florida Legislature in 2020, could potentially contradict the ruling in the controlling case on abortion in Florida, *In re T.W.*, (discussed below). However, as of Jan. 27, 2022, no challenge of the parental consent requirements has been filed.

the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. A termination of pregnancy after viability in an emergency situation must be performed in a hospital.<sup>11</sup>

Prior to performing an abortion, s. 390.011(3), F.S., requires a physician to obtain voluntary and informed written consent from the pregnant woman. Except in the case of emergency, consent is considered voluntary and informed only if 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:

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

The person performing the ultrasound is required to offer the woman the opportunity to view the ultrasound, which the woman may decline. If the woman provides, at the time she schedules or arrives for her appointment to obtain an abortion, 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, the person performing the ultrasound may not offer the opportunity to view the images and the information required to be provided may be provided less than 24 hours prior to performing the abortion.

### **Federal Case Law on Abortion**

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision. Using the strict scrutiny standard, the Court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest and must be narrowly drawn.<sup>12</sup>

In 1992, the U.S. Supreme Court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Court upheld the statute and relaxed the standard of review in abortion cases involving adult women from "strict scrutiny" to "unduly burdensome." An undue burden exists and makes a statute invalid if the statute's purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.<sup>13</sup>

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<sup>11</sup> Section 797.03(3), F.S.

<sup>12</sup> *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

<sup>13</sup> *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)

The Court held that the undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state's interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman's right to elect the procedure. However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman's life or health.<sup>14</sup>

### **Potential Updates to Federal Case Law on Abortion**

Two cases are currently working their way through the legal system, each of which has the potential to overrule or modify the standards on abortion that were established in *Roe v. Wade* and *Casey*.

#### ***Jackson Women's Health Org. v. Dobbs***

*Jackson Women's Health Org. v. Dobbs*,<sup>15</sup> is a case challenging Mississippi's Gestational Age Act. The Gestational Age Act<sup>16</sup> prohibited all abortions after 15 weeks of gestational age and was permanently enjoined by the lower courts in 2019. The U.S. Supreme Court held oral arguments on the case for Dec. 1, 2021, and will likely rule on the case sometime in mid-2022.

#### ***Whole Woman's Health v. Jackson***

*Whole Woman's Health v. Jackson*<sup>17</sup> is a case challenging Texas's SB 8 (2021).<sup>18</sup> The Texas law, which is currently in effect, outlaws performing an abortion on an unborn child once a fetal heartbeat has been detected, with an exception for medical emergencies. However, unlike a standard abortion ban, the law specifically prohibits state actors from enforcing its provisions. Instead, the law creates a cause of action for any person, other than an officer or employee of the state or local governmental entity in the state, to sue in civil court over the performance of such an abortion or the aiding and abetting of such an abortion. If the claimant prevails, the law requires that the defendant pay at least \$10,000 per abortion performed or aided and abetted as well as court costs and attorney fees.

The status of the case is complicated, but, after multiple appeals and reviews regarding standing and the ability to seek a pre-enforcement review of the law, the U.S. Supreme Court ruled on December 10, 2021, that the pre-enforcement case may proceed, but the petitioners are only authorized to sue executive branch licensing officials. Currently, the case is in the possession of the Texas 5<sup>th</sup> Circuit Court of Appeals which has certified questions about the licensing-official defendants to the Texas Supreme Court rather than remand the case to the lower court to

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<sup>14</sup> *Id.*

<sup>15</sup> *Jackson Women's Health Org. v. Currier*, 349 F. Supp. 3d 536 (S.D. Miss. 2018), *aff'd sub nom. Jackson Women's Health Org. v. Dobbs*, 945 F.3d 265 (5th Cir. 2019)

<sup>16</sup> Mississippi HB 1510, available at <http://billstatus.ls.state.ms.us/documents/2018/html/HB/1500-1599/HB1510IN.htm#:~:text=AN%20ACT%20TO%20BE%20KNOWN,SECTION%201>. (last visited Feb. 16, 2022).

<sup>17</sup> *Whole Woman's Health v. Jackson*, 142 S. Ct. 522 (2021)

<sup>18</sup> Available at [Bill Text: TX SB8 | 2021-2022 | 87th Legislature | Enrolled | LegiScan](#) (last visited Feb. 16, 2022).

continue its proceedings. Additionally, the Court of Appeals has refused to issue an injunction preventing the law from taking effect and, as such, the law is currently effective in Texas.

### **Florida Case Law on Abortion**

In 1989, in the case *In re T.W., a Minor*,<sup>19</sup> the Florida Supreme Court upheld a lower court ruling striking the requirement that a minor obtain parental consent prior to obtaining an abortion. This ruling is the controlling case law for abortion law in Florida and is of consequence because, rather than standing the ruling upon the established Federal case law of *Roe v. Wade* and *Planned Parenthood v. Casey*, the Florida Supreme Court determined that:

To be held constitutional, the instant statute must pass muster under both the federal and state constitutions. Were we to examine it solely under the federal Constitution, our analysis necessarily would track the decisions noted above. However, Florida is unusual in that it is one of at least four states having its own express constitutional provision guaranteeing an independent right to privacy, . . . and we opt to examine the statute first under the Florida Constitution. If it fails here, then no further analysis under federal law is required.

The Court determined that the right to privacy enshrined in Art. I, S. 23 of the Florida Constitution “is clearly implicated in a woman’s decision of whether or not to continue her pregnancy.” Therefore, unlike under the Federal Constitution which requires a state only to show that a restriction on abortion is not “unduly burdensome,” in Florida the state must show that the abortion restriction “furthers a compelling state interest through the least intrusive means.”

The court further determined that “Under our Florida Constitution, the state’s interest becomes compelling upon viability, as defined below. Until this point, the fetus is a highly specialized set of cells that is entirely dependent upon the mother for sustenance. No other member of society can provide this nourishment. The mother and fetus are so inextricably intertwined that their interests can be said to coincide. Upon viability, however, society becomes capable of sustaining the fetus, and its interest in preserving its potential for life thus becomes compelling.”

### **Abortion Data Reporting**

Section 390.0112, F.S., requires the medical director of medical facilities where abortions are performed to submit a monthly report to the Agency for Health Care Administration (AHCA) that must contain information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the CDC.<sup>20</sup> If the abortion is performed in a location other

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<sup>19</sup> *In re T.W.*, 551 So. 2d 1186 (Fla. 1989)

<sup>20</sup> The CDC requests the following information from states for the U.S. Standard Report of Induced Termination of Pregnancy: facility name (clinic or hospital); city, town or location; county; hospital or clinic’s patient identification number (used for querying for missing information without identifying the patient); age; marital status; date of termination; residence of patient; ethnicity; race; education attainment; date of last menses; clinical estimate of gestation; previous pregnancy history; previous abortion history; type of abortion procedure; and name of attending physician and name of person completing report. Centers for Disease Control, Handbook on the Reporting of Induced Termination of Pregnancy, [www.cdc.gov/nchs/data/misc/hb\\_itop.pdf](http://www.cdc.gov/nchs/data/misc/hb_itop.pdf) (last visited on Feb. 16, 2022).

than a medical facility, the physician who performed the abortion is responsible for reporting the information to the AHCA.<sup>21</sup>

In 2020, there were 209,645 live births in Florida.<sup>22</sup> In 2021, there were 68,449 abortion procedures performed in the state. Of those:<sup>23</sup>

- 64,345 were performed in the first trimester (12 weeks and under);
- 4,104 were performed in the second trimester (13 to 24 weeks); and
- None were performed in the third trimester (25 weeks and over).

The majority of the procedures (51,047) were elective.<sup>24</sup> The remainder of the abortions were performed due to:<sup>25</sup>

- Emotional or psychological health of the mother (1,340);
- Physical health of the mother that was not life endangering (927);
- Life endangering physical condition (106);
- Rape (97);
- Incest (8);
- Serious fetal genetic defect, deformity, or abnormality (642); and
- Social or economic reasons (14,282).

The AHCA must keep this information in a central location from which statistical data can be drawn and must provide this information to the Center for Disease Control and Prevention (CDC) upon request.<sup>26</sup> The reports are confidential and exempt from public records requirements.<sup>27</sup> The AHCA may impose fines for violations of the reporting requirements.<sup>28</sup> Abortion providers report abortions due to rape or incest but are not currently required to report whether the abortion was due to human trafficking.

### **Infant Mortality**

Infant mortality is the death of an infant before the first birthday. The infant mortality rate is the number of infant deaths for every 1,000 live births. In addition to giving key information about maternal and infant health, the infant mortality rate is a marker of the overall health of a society. In 2019, the infant mortality rate in the United States was 5.6 deaths per 1,000 live births.<sup>29</sup>

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<sup>21</sup> Section 390.0112(3), F.S.

<sup>22</sup> Total Resident Live Births, Department of Health, available at <https://www.flhealthcharts.gov/ChartsReports/rdPage.aspx?rdReport=Birth.DataViewer&cid=25> (last viewed Jan. 25, 2022).

<sup>23</sup> Reported Induced Terminations of Pregnancy by Reason, by Trimester, Agency for Health Care Administration, available at [https://ahca.myflorida.com/mchq/central\\_services/training\\_support/docs/TrimesterByReason\\_2021.pdf](https://ahca.myflorida.com/mchq/central_services/training_support/docs/TrimesterByReason_2021.pdf) (last viewed Jan. 25, 2022).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* The CDC compiles statistics voluntarily reported by the 50 states, the District of Columbia and New York City, related to termination of pregnancies to produce a national data report. *Abortion Surveillance- United States, 2019*, Surveillance Summaries, Centers for Disease Control and Prevention, November 26, 2021 / 70(9);1–29 <https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm> (last visited on Feb. 16, 2022).

<sup>27</sup> Section 390.0112(3), F.S.

<sup>28</sup> Section 390.0112(4), F.S.

<sup>29</sup> Centers for Disease Control and Prevention, *Infant Mortality*, <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm> (last visited Feb. 16, 2022).

### ***Infant Mortality in Florida***

The DOH reports annually on fetal and infant deaths through the Florida Vital Statistics Annual Report.<sup>30</sup> This report provides the number of fetal deaths per 1,000 live births, the number of deaths by race, and compares that data to national figures. Florida ranks 18<sup>th</sup> in the nation in infant mortality with a rate of six deaths per 1,000 live births (1,213 in 2020).<sup>31</sup>

### **Fetal and Infant Mortality Review (FIMR)**

FIMR is a process of community-based fetal and infant mortality reviews aimed at addressing factors and issues that affect infant mortality and morbidity. FIMR committees aim to gain knowledge through the reviews to empower communities to enhance services, influence policy, and direct planning efforts that will ultimately lower infant mortality rates. The process is based on the National FIMR model which supports case review and interventions at the local level.<sup>32, 33</sup>

### ***FIMR Process***

In Florida, a FIMR committee operates in a two-tier structure consisting of a Healthy Start Coalition (Coalition) and a Case Review Team (CRT). The FIMR process begins when infant death cases are selected for review by a committee within a Coalition based on specific criteria, including type of death, residence, and race. Information is abstracted from birth, death, medical, hospital and autopsy records. Efforts are also made to interview the family. No information which identifies the family or medical providers is included on the abstraction form.<sup>34</sup>

Case summaries are developed by the Coalition committee and presented to the CRT, a multidisciplinary group of community medical and social service professionals. This group usually includes a district and local health officer, obstetrician, pediatrician, social worker, nurse-midwife, a hospital and community nurse, coroner or medical examiner, interviewer, abstractor, community outreach worker, mental health counselor, and other people important to the individual reviews. The CRT examines each case to determine medical, social, financial and other issues that may have impacted the poor birth outcome. Recommendations for community action are crafted by the CRT based on review findings. These recommendations are shared with the Community Action Group, a group of volunteers working with at-risk families and other partner agencies<sup>35</sup> in the region to implement and develop street-level outreach activities.<sup>36</sup>

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<sup>30</sup> Florida Vital Statistics Annual Report 2020, <http://www.flpublichealth.com/VSbook/PDF/2020/Fetal.pdf> (last visited Feb. 16, 2022).

<sup>31</sup> *Id.* See also Centers for Disease Control and Prevention, Infant Mortality Rates by State (2019), [https://www.cdc.gov/nchs/pressroom/sosmap/infant\\_mortality\\_rates/infant\\_mortality.htm](https://www.cdc.gov/nchs/pressroom/sosmap/infant_mortality_rates/infant_mortality.htm) (last visited Feb. 16, 2022).

<sup>32</sup> Florida Department of Health. *FIMR*, available at [http://www.doh.state.fl.us/family/mch/FIMR/fimr\\_facts.html](http://www.doh.state.fl.us/family/mch/FIMR/fimr_facts.html) (last visited Feb. 16, 2022).

<sup>33</sup> Currently, 19 Healthy Start Coalition areas do not have FIMRs. For a map of the areas that do and do not have FMIRs see: Presentation on FMIRs by Cathy Timuta, CEO, Florida Association of Health Start Coalitions, Inc., in the Florida House Professions and Public Health Subcommittee, October 13, 2021, p. 5, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3093&Session=2022&DocumentType=Meeting+Packets&FileName=pph+10-13-21.pdf> (last visited Feb. 16, 2022).

<sup>34</sup> *Supra* note 32.

<sup>35</sup> Partner agencies may include health departments, hospitals, medical societies, schools, community and business leaders, and consumers

<sup>36</sup> *Supra*, note 31.

## **Comprehensive Statewide Tobacco Education and Use Prevention**

On November 7, 2006, the voters in the State of Florida adopted Amendment 4, creating the Comprehensive Statewide Tobacco Education and Prevention Program.<sup>37</sup> Pursuant to the amendment, the state is required to create a comprehensive, statewide program consistent with the CDC's 1999 best practices, as periodically amended. The program must consist, at a minimum, of the following components:<sup>38</sup>

- An advertising campaign, funded by at least one-third of the required annual appropriation;
- Evidence-based curricula and programs to educate youth about tobacco and discourage their use of it;
- Programs of local community-based partnerships;
- Enforcement of laws, regulations, and policies against the sale or other provision of tobacco to minors, and the possession of tobacco by minors; and
- Publicly-reported annual evaluations to ensure that moneys appropriated for the program are spent properly.

The Constitution specifies that the Legislature must appropriate 15 percent of the total gross funds that tobacco companies paid to the State of Florida in 2005 under the Tobacco Settlement. This amount must be adjusted annually for inflation using the Consumer Price Index. For State Fiscal Year 2021-22, the mandated appropriation is \$73.9 million.<sup>39</sup>

In 2007, the Legislature created s. 381.84, F.S., the Comprehensive Statewide Tobacco Education and Use Prevention Program (Program), to implement the constitutional amendment. The Program consists of nine components:<sup>40</sup>

- Counter-marketing and advertising;
- Cessation programs, counseling, and treatment;
- Surveillance and education;
- Youth and school programs;
- Community programs and chronic disease prevention;
- Training of health care practitioners, tobacco-use cessation counselors, and teachers;
- Administration and management;
- Enforcement and awareness of related laws; and
- The area health education centers (AHEC) tobacco-use cessation initiative.

## **Florida Perinatal Quality Collaborative (FPQC)**

The FPQC was established in 2010 and is housed in the Chiles Center at the University of South Florida College of Public Health. FPQC aims to improve Florida's maternal and infant health outcomes through evidence-based perinatal care. FPQC partners with stakeholders, such as perinatal-related organizations, individuals, families, health professionals, hospitals, and payers, to develop and implement quality improvement initiatives at partner hospitals that provide

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<sup>37</sup> Art. X, s. 27, Fla. Const.

<sup>38</sup> *Id.*

<sup>39</sup> Fla. General Appropriation Act Fiscal Year 2021-2022, SB 2500 item 458.

<sup>40</sup> Section 381.84(3), F.S.



birthing services (labor and delivery) to address maternal and infant mortality.<sup>41</sup> Hospital participation in FPQC initiatives is voluntary.

Currently, FPQC has four active initiatives:<sup>42</sup>

- **Promoting Primary Vaginal Deliveries (PROVIDE):**<sup>43</sup> The goal of the PROVIDE Initiative is to improve maternal and newborn outcomes by applying evidence-based interventions to promote primary vaginal deliveries at Florida delivery hospitals and ultimately reduce Nulliparous, Term, Singleton, Vertex cesareans.<sup>44</sup> 75 hospitals currently participate in PROVIDE.
- **Family-Centered Care in the NICU (PAIRED):**<sup>45</sup> PAIRED helps hospital neonatal intensive care units (NICU) develop and implement unit-specific strategies to improve how a family engages with the NICU staff to assist in the care of their infant in a way that provides value to the family and to the NICU team. As its centerpiece project, this initiative facilitates **adoption or expansion of safe skin-to-skin care**, which has a growing evidence base for achieving better infant and family outcomes. 16 hospitals currently participate in PAIRED.
- **Perinatal Quality Indicators System (PQI):**<sup>46</sup> The PQI initiative supports hospital quality improvement efforts by providing hospital-specific semi-annual or quarterly reports of perinatal indicators and related reports. PQI is offered to all Florida delivery hospitals at no charge and hospitals can enroll at any time. 56 hospitals currently participate in PQI.
- **Maternal Opioid Recovery Effort (MORE):**<sup>47</sup> MORE works with providers, hospitals, and other stakeholders to improve identification, clinical care, and coordinated treatment and support for pregnant women with opioid use disorder (OUD) and their infants. MORE focuses on standardization related to OUD screening, prevention, treatment, and comprehensive discharge planning. 31 hospitals are currently participating in MORE.

### III. Effect of Proposed Changes:

This bill amends several sections of law in order to reduce fetal and infant mortality.

**Section 1** amends s. 381.84, F.S., to add the requirement that the Comprehensive Statewide Tobacco Education and Use Prevention Program must target information towards pregnant women and women who may become pregnant.

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<sup>41</sup> USF Health College of Public Health, *Florida Perinatal Quality Collaborative – About the FPQC*, <https://health.usf.edu/publichealth/chiles/fpqc/about> (last visited Feb. 16, 2022).

<sup>42</sup> USF Health College of Public Health, *Florida Perinatal Quality Collaborative*, <https://health.usf.edu/publichealth/chiles/fpqc> (last visited Feb. 16, 2022).

<sup>43</sup> USF Health College of Public Health, *Florida Perinatal Quality Collaborative – Promoting Vaginal Deliveries*, <https://health.usf.edu/publichealth/chiles/fpqc/provide> (last visited Feb. 16, 2022).

<sup>44</sup> Nulliparous, Term, Singleton, Vertex (NTSV) Cesareans are cesarean births where babies are at or beyond 37.0 weeks gestation to women in their first pregnancy, that are singleton (no twins or beyond) and in the vertex presentation (no breech or transverse positions).

<sup>45</sup> USF Health College of Public Health, *Florida Perinatal Quality Collaborative – PAIRED Initiative*, <https://health.usf.edu/publichealth/chiles/fpqc/paired> (last visited Feb. 16, 2022).

<sup>46</sup> USF Health College of Public Health, *Florida Perinatal Quality Collaborative – Perinatal Quality Indicators System*, <https://health.usf.edu/publichealth/chiles/fpqc/indicators> (last visited Feb. 16, 2022).

<sup>47</sup> USF Health College of Public Health, *Florida Perinatal Quality Collaborative – Maternal Opioid Recovery Effort (MORE)*, <https://health.usf.edu/publichealth/chiles/fpqc/MORE> (last visited Feb. 16, 2022).

**Section 2** creates s. 383.21625, F.S., to require the Department of Health (DOH) to contract with local Healthy Start coalitions for the creation of fetal and infant mortality review (FIMR) committees in all regions of the state. Each FIMR committee is required to:

- Review and analyze rates, trends, causes, and other data related to fetal and infant mortality and morbidity in its geographic area.
- Develop findings and recommendations for interventions and policy changes to reduce fetal and infant mortality and morbidity rates.
- Engage with local communities and stakeholders to implement recommended policies and procedures to reduce fetal and infant mortality and morbidity.

The bill also requires each Healthy Start coalition to report the findings and recommendations developed by its FIMR committee to the DOH annually. The DOH is required to compile the findings and recommendations in an annual report submitted to the Governor and the Legislature beginning October 1, 2023.

The bill gives the DOH rulemaking authority to implement the section and **Section 7** of the bill and appropriates \$1,602,000 in recurring funds from the General Revenue Fund in Fiscal Year 2022-2023 to the DOH to establish the FIMR committees.

**Sections 3, 4, and 5** amend ss. 390.011, 390.0111, and 390.0112, F.S., respectively, to amend provisions related to abortion.

**Section 3** amends s. 390.011, F.S., to:

- Define the term “fatal fetal abnormality” to mean a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.
- Redefine the term “gestation” to mean the development of a human embryo or fetus as calculated from the first day of the pregnant woman’s last menstrual period (LMP). This differs from the current-law definition of “gestation,” which is the development of a human embryo or fetus between fertilization and birth.
- Define “medical abortion” to mean the administration or use of an abortion-inducing drug to induce an abortion.

**Section 4** amends s. 390.0111, F.S., to prohibit a physician from performing an abortion if the gestational age of the fetus is more than 15 weeks. The bill applies current law exceptions to the 15-week ban for emergencies and to save the pregnant woman’s life or to prevent a serious risk of substantial and irreversible physical impairment of a major bodily function to the new prohibition. The bill also adds a new exception to the 15-week ban that applies if the fetus has a fatal fetal abnormality and has not reached viability.

**Section 5** amends s. 390.0112, F.S., to require that the Agency for Healthcare Administration (AHCA) adopt by rule a form for reporting abortions. The bill requires the form to include:

- Information required to be reported under current law;
- The number of abortions performed; and
- The number of drug regimens dispensed or prescribed for medical abortions.

Additionally, the bill specifies that, if a woman provides evidence of human trafficking under the exceptions provided for obtaining informed consent in s. 390.011(3), F.S., human trafficking must be reported as a reason for the abortion.

**Section 6** creates s. 395.1054, F.S, to require a hospital that provides birthing services to, at all times, participate in at least two quality improvement initiatives developed in collaboration with the Florida Perinatal Quality Collaborative (FPQC) within the University of South Florida College of Public Health.

The bill provides an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill's provisions may implicate the privacy rights established by Federal case law, as well as privacy rights established in Art. I, s. 23 of the Florida Constitution. For a discussion on the relevant case law, please see the "Present Situation" section of this analysis.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

CS/HB 5 appropriates \$1,602,000 in recurring funds from the General Revenue Fund in Fiscal Year 2022-2023 to the Department of Health, for the purpose of establishing fetal infant mortality review committees as required under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.84, 390.011, 390.0111, and 390.0112.

This bill creates the following sections of the Florida Statutes: 395.1054 and 383.21625.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.