A bill to be entitled

An act relating to abortion; creating the "Florida for Life Act"; creating s. 390.0001, F.S.; providing legislative findings regarding abortion; repealing s. 390.011, F.S., relating to definitions; creating s. 390.01113, F.S.; providing definitions; prohibiting inducing, performing, attempting to perform, or assisting in induced abortions; providing criminal penalties; prohibiting inflicting serious bodily injury on a person in the course of performing an abortion; providing criminal penalties; providing enhanced criminal penalties if the serious bodily injury results in death; prohibiting operation of any facility, business, or service within this state for the purpose of providing induced abortion services; providing criminal penalties; prohibiting termination of a pregnancy unless specified conditions are met; requiring that a termination of pregnancy be performed only by a physician; requiring that a termination of pregnancy only be performed with voluntary, informed consent; providing requirements for consent; providing an exception for cases of medical emergency; providing requirements for documentation of a medical emergency; providing that violations may subject physicians to discipline under specified provisions; providing a standard of medical care to be used during a termination of pregnancy performed while the patient's fetus is viable; providing that the woman's life is a superior consideration to the concern for the life of the

fetus and the woman's health is a superior consideration to the concern for the health of the fetus when such life or health concerns are in conflict; prohibiting a physician willfully misrepresenting the gestational age or stage of fetal development of a viable fetus in an entry into any medical record and failing to use the prescribed standard of care on a viable fetus; providing criminal penalties; prohibiting experimentation on a fetus; providing an exception; requiring that fetal remains be disposed of according to specified standards; providing criminal penalties; providing that provisions do not apply to specified procedures; providing a civil cause of action for violations; providing damages; requiring physicians and certain personnel at a medical facility who learn that a pregnant woman treated by the facility wishes to obtain an induced abortion at the facility or that a woman treated by the facility has had a termination of pregnancy and the fetus was born alive and survives and such woman does not wish to keep the child to provide the woman with information concerning the availability of adoption; providing that specified actions constitute compliance; providing that violation of certain provisions by a physician may be grounds for discipline under specified provisions; providing rulemaking authority to the Agency for Health Care Administration and the Department of Health for specified provisions; repealing s. 390.0111, F.S., relating to termination of pregnancies; amending ss. 743.065 and 765.113, F.S.; conforming cross-references;

repealing s. 390.0112, F.S., relating to termination of pregnancy reporting; repealing s. 390.01114, F.S., relating to the Parental Notice of Abortion Act; amending ss. 27.511 and 390.01116, F.S.; conforming cross-references; repealing s. 390.012, F.S., relating to powers of the Agency for Health Care Administration, rulemaking, and the disposal of fetal remains; repealing s. 390.014, F.S., relating to licenses and fees; repealing s. 390.015, F.S., relating to application for license; repealing s. 390.018, F.S., relating to administrative fines; repealing s. 390.025, F.S., relating to abortion referral or counseling agencies and penalties; repealing s. 782.30, F.S., relating to the short title for the Partial-Birth Abortion Act; repealing s. 782.32, F.S., relating to definitions for the Partial-Birth Abortion Act; repealing s. 782.34, F.S., relating to partial-birth abortion; repealing s. 782.36, F.S., relating to exceptions to the Partial-Birth Abortion Act; amending s. 39.001, F.S.; providing legislative intent concerning adoption services for women with unwanted pregnancies; requiring the Office of Adoption and Child Protection to establish and manage a statewide list of attorneys providing pro bono adoption services for women with unwanted pregnancies who would have selected abortion, if lawful, rather than adoption; providing that all federal moneys received by the state as a result of efforts made by the office shall only be spent by the office; creating s. 390.01117, F.S.; providing that the section takes effect only if s. 390.01113, F.S., is

declared unconstitutional or has its enforcement enjoined; providing definitions; prohibiting termination of a pregnancy after a fetus has been determined to be viable; providing exceptions; requiring a determination of viability for women in a certain week of pregnancy or later before termination may be performed; requiring recordkeeping; providing that determination of viability and the performance of a required ultrasound may not be done by a physician providing reproductive health services at an abortion clinic; requiring that a termination of pregnancy involving a viable fetus, when not prohibited, be performed in a hospital or other medical facility; providing a standard of medical care to be used during a termination of pregnancy performed while the patient's fetus is viable; providing that the woman's life is a superior consideration to the concern for the life of the fetus and the woman's health is a superior consideration to the concern for the health of the fetus when such life or health concerns are in conflict; prohibiting a physician willfully misrepresenting the gestational age or stage of fetal development of a viable fetus in an entry into any medical record and failing to use the prescribed standard of care on a viable fetus; providing criminal penalties; providing that only a physician may perform a termination of pregnancy; requiring voluntary and informed written consent to a termination; providing requirements for such consent; providing an exception for cases of medical emergency; providing requirements for

documentation of a medical emergency; providing that violations may subject physicians to discipline under specified provisions; prohibiting experimentation on a fetus; providing an exception; requiring that fetal remains be disposed of according to specified standards; providing criminal penalties; providing that no person or facility is required to participate in the termination of a pregnancy or be liable for such refusal; providing that provisions do not apply to specified procedures; prohibiting willfully inducing, performing, or assisting in a termination of pregnancy procedure on another person in violation of specified requirements; providing criminal penalties; prohibiting inflicting serious bodily injury on a person in the course of performing an abortion; providing criminal penalties; providing enhanced criminal penalties if the serious bodily injury results in death; providing a civil cause of action for violations; providing damages; requiring physicians and certain personnel at a medical facility who learn that a pregnant woman treated by the facility wishes to obtain an induced abortion at the facility or that a woman treated by the facility has had a termination of pregnancy and the fetus was born alive and survives and such woman does not wish to keep the child to provide the woman with information concerning the availability of adoption; providing that specified actions constitute compliance; providing rulemaking authority to the Agency for Health Care Administration and the Department of Health for specified

provisions; providing that rulemaking authority is supplemental to other specified provisions; providing that if the provision creating s. 390.01117, F.S., is declared unconstitutional or has its enforcement enjoined, then the repeal of s. 390.011, F.S., and the amendments to s. 39.001, F.S., are void and of no effect; providing legislative intent; creating s. 390.01118, F.S.; providing that the section shall become effective only in the event that s. 390.01113, F.S., is declared unconstitutional or has its enforcement enjoined; providing legislative findings concerning parental notice of abortion; providing that this section supersedes s. 390.01114, F.S., in its entirety unless it is found unconstitutional, in which case s. 390.01114, F.S., shall apply; providing definitions; requiring a physician performing or inducing an abortion or a referring physician before the performance or inducement of the abortion on a minor to provide actual notice to the minor's parent or guardian; providing for constructive notice if actual notice is not possible; providing for requirements for actual and constructive notice; providing exceptions to notice requirement; providing for judicial waiver of notice; providing legislative findings; specifying when judicial waiver is available; requiring appointment of a guardian ad litem for a minor seeing waiver; providing for precedence of and timeframes for waiver proceedings; providing that failure to rule within the prescribed timeframe may be considered nonfeasance in office;

providing for a standard of proof; providing requirements for orders in waiver proceedings; requiring written transcripts; providing for expedited confidential appeals; providing that a minor may not be assessed fees or court costs; providing that a county is not required to pay expenses of counsel for a minor; requiring an annual report by the Office of the State Courts Administrator concerning waiver proceedings; providing that if s. 390.01113, F.S., is declared unconstitutional or has its enforcement enjoined, specified statutory repeals and amendments contained in this act are void and of no effect; providing legislative intent; providing that s. 390.0001, F.S., is severable from other provisions of this act; providing an effective date.

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

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

Section 2. Section 390.0001, Florida Statutes, is created to read:

390.0001 Legislative findings regarding abortion.—

(1) Consistent with the self-evident truths expressed in this nation's Declaration of Independence dated July 4, 1776, the people of the State of Florida declare and acknowledge that all persons are endowed by their Creator with certain unalienable rights, and that first among these rights is the right to life.

(2) The Legislature finds that the Preamble to the Constitution of the State of Florida contains the sovereign peoples' acknowledgment of the Creator as the source of constitutional liberty saying: "We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, guarantee equal civil and political rights to all, do ordain and establish this constitution."

(3) The Legislature of the people of the State of Florida finds that all life comes from the Creator and begins at conception.

(4) The Legislature further finds the ultimate sovereign authority in every state of the United States of America resides in the people and that fundamental to the governmental structure ordained and established by the people in the Constitution of the United States is the right of the people to self-government as set forth therein and as further set forth in their respective state constitutions. As the Supreme Court of the United States has stated, "The government of the Union ... is emphatically and truly, a government of the people. In form, and in substance, it emanates from them." (*McCulloch v. Maryland*, 17 U.S. 316, 404-405 (1819)).

(5) The Legislature finds that the United States Constitution expresses no qualification for, or limitation on, the ability of the states to protect life in a manner consistent with the moral consensus of the people, and reflecting the peoples' belief in a Creator, and respecting life as being a

divine gift of the highest value which is deserving of paramount importance among all other unalienable rights expressed or implied in the United States Constitution.

(6) The Legislature finds that once life begins the state has a compelling interest in protecting the natural course of its development from that moment through birth, as surely as after birth. Any act of a person detrimental to an unborn human life, when not necessary in defense of the life of the mother bearing such unborn life, which unnaturally terminates that life, is a deprivation of an unalienable right which the people have the sovereign discretion to protect through laws enacted by their respective legislatures.

(7) The Legislature finds that the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973)("*Roe*"), and *Planned Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833 (1992) ("*Casey*"), declared that a woman's interest in having an abortion is a liberty interest protected under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Legislature also finds that to devise into the United States Constitution a liberty interest in one person to take the life of another when not necessary for defense of one's life is repugnant to the principles expressed in the United States Constitution as established and ordained by the people. Personal liberty is not a license to kill an innocent life under any provision of the United States Constitution.

(8) The Legislature finds that the United States Supreme Court's decisions noted in subsection (7) and those which adhere to them subordinate the unalienable right to life to a "liberty"

interest devised by man which is inconsistent with, and cannot supersede, the right to life given the peoples' accepted source of authority for all unalienable rights. A liberty right to abortion denies the authority of the Creator in all matters of life, and the people through the exercise of their right of self-government have the sovereign authority to regard all human life with the highest reverence. As Thomas Jefferson wrote in "A Summary View of the Rights of British America" (1774), "The god who gave us life, gave us liberty at the same time: the hand of force may destroy, but cannot disjoin them."

(9) The Legislature finds that *Casey* and its proclaimed reaffirmation of the "essential" holding of *Roe* should be reviewed by the United States Supreme Court for many of the same reasons the court found it necessary to review *Roe* when it considered *Casey*. First, the passage of time has shown there remains among the states doubt as to the meaning and reach of the court's opinion in *Casey*. Second, state legislatures and courts throughout the nation still lack adequate guidance as they seek to address abortion regulations in conformance with putative precedents interpreting the United States Constitution. In addition, since the time *Roe* was decided, more information has become known related to the factual assumptions which motivated the court's decision that significantly call into question the correctness of the *Roe* decision and the propriety of perpetuating its essential holding through *Casey*.

(10) The Legislature finds that despite the court's finding in *Casey* that it is "imperative to review once more the principles that define the rights of the woman and the

legitimate authority of the State respecting ... abortion procedures" (*Casey* at 845), that neither *Casey* nor its progeny have adequately defined the constitutional scope of the Legislature's authority to protect unborn human life to the maximum extent allowed by law.

(11) The Legislature finds that nowhere in the lead plurality opinion of *Casey* is there any expression of confidence that *Roe* was correctly decided or that it assigned adequate weight to the state's interest in protecting unborn human life, but merely that *Roe's* "essential holding" had to be followed to preserve the court's legitimacy. (See *Casey* at 867 and 869). Further, the court expressed a lack of concern over adequately determining a state's interest in protecting unborn human life saying: "Even on the assumption that the central holding of *Roe* was in error, that error would go only to the strength of the state interest in fetal protection, not to the recognition afforded by the Constitution to the women's liberty." (*Casey* at 858).

(12) The Legislature finds that it is fundamentally unfair to have the constitutionality of this state's laws determined by balancing the state's interest in protecting unborn human life against the liberty interest of a woman to terminate her pregnancy when the United States Supreme Court's lead analysis of the state's legitimate interest in protecting life reflects indifference to the prospect that the state's life interest is being undervalued. (See *Casey* at 853 and 858.)

(13) The Legislature finds that the value attributed to human life from its beginning through to its end is a moral

value judgment for the people to decide in accordance with the republican form of government established in the United States Constitution and is not a matter which can be legitimately removed by any branch of government from their sovereign authority to decide within their respective states.

(14) The Legislature finds that the Constitution of the United States does not vest in the United States Supreme Court the power to determine moral questions on behalf of the citizens of any state without their consent. Further, the Legislature finds that the justices of the United States Supreme Court are not qualified to determine, establish, or define the moral values of the people of the United States and specifically for the people of Florida. The Supreme Court's removal of moral and political questions from the political power of the people to determine, under color of constitutional adjudication, is a violation of the peoples' right to self-government guaranteed under the Constitution of the United States. (See *Carter v. Carter Coal*, 298 U.S. 238, 295 (1936).

(15) The Legislature finds that the legal standard set forth in *Casey* prohibiting legislation which places an "undue" burden on a woman seeking an abortion denies protection to the life of the unborn child which state legislatures should be constitutionally entitled to protect. The legal standard of *Casey* is arbitrary and subjective with no ascertainable guidelines, leaving state legislatures to guess as to what actions can be taken to grant unborn human life the full protection of the laws.

(16) The Legislature finds that the legal standard set forth in *Roe* and reaffirmed in *Casey*, which establishes viability as the point after which the state may restrict abortions if the law contains exceptions for pregnancies which endanger a woman's life or health, provides inadequate guidance for the state to enact meaningful and enforceable protections for fetal life from the moment the state's interest in protecting such life matures to state authority to lawfully restrict abortions. Further, the Legislature finds that "viability" as the demarcation line at which the state may act to prohibit, restrict, or regulate abortions is an arbitrary point in time with no basis in the United States Constitution.

(17) The Legislature finds that the application of the health exception required to be included in post-viability abortion regulations, as described in *Doe v. Bolton*, 410 U.S. 179 (1973), inadequately protects the maternal health of women seeking or obtaining post-viability abortions; fails to promote the long-term physical, emotional, familial, and psychological well-being of women obtaining abortions; and undermines the state's interest in protecting viable fetal life.

(18) The Legislature finds that despite the recognition by the United States Supreme Court in *Roe* and *Casey* that "the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that *may become a child*" (*Casey* at 846, emphasis added), the state's interest in protecting a life which "may become a child" has proven illusory in the context of regulating abortion, in that the purpose of an abortion procedure extends beyond the

termination of a woman's pregnancy and proceeds to the removal of a dead or fatally injured fetus rather than the removal of a live fetus from the womb while he or she still possesses any meaningful chance of survival to "become a child."

(19) The Legislature finds that there have been approximately 50 million human lives aborted in the United States since the *Roe* decision. The Legislature further finds that every life lost to abortion was sacred and of the highest value.

(20) The Legislature finds that women with unwanted pregnancies choose abortion for a variety of reasons which are difficult, deeply personal, and highly emotional. The Legislature categorically rejects the notion suggested by the Supreme Court in footnote 54 of *Roe* that exclusion of women seeking abortion from criminal prosecution implies a contradiction with the granting full constitutional protection for unborn human life. The Legislature reserves for itself the right to determine what is in the public interest in regard to assigning criminal liability for abortion and possesses constitutional competence superior to any court's to make such determination.

(21) The Legislature finds the jurisprudence of this state and of the nation is such that it protects the lives of persons guilty of the most wretched, atrocious, heinous, and brutal crimes to a far greater degree than it permits protecting the lives of absolutely innocent, yet unborn, human beings. Great protections are established before the state may execute a person convicted of a capital crime, while virtually nothing

exists to protect the life of an unwanted unborn child from a personal choice of his or her mother not to complete the natural course of her pregnancy. It has been noted by the United States Supreme Court that underlying the Eighth Amendment's prohibition against cruel and unusual punishment is "nothing less than the dignity of man ... The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." The court quoted a remark of Justice Stewart in this regard: "Even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold." (*Atkins v. Virginia*, 536 U.S. 304 (2002), quoting *Robinson v. California*, 370 U.S. 660, 666-667 (1962)). The Legislature finds that the dignity of man is also measured by the level of protection afforded defenseless innocent life whose only "crime" is to be unwanted by his or her mother or conceived at an inopportune time or as an undesired gender. The Legislature finds that by any standard of basic human decency, innocent and defenseless human life is entitled to respect and meaningful protection under the law.

(22) The Legislature finds that in the years following the *Roe* opinion, the standard of decency of the people of this state has evolved to such a degree that at this time they demand the right to exercise their political power as guaranteed under the United States Constitution and under the Constitution of the State of Florida to enact legislation prohibiting unnecessary abortion in Florida and providing penalties for violation of such prohibition. Statistical information reflects that the frequency of abortion is generally declining in Florida as well

as in other states across the nation. Recent Gallup polls reflect significant changes in public opinion on abortion with a majority of people, 51 percent, considering themselves "Pro-Life" versus a minority of people, 42 percent, considering themselves "Pro-Choice." In addition, state legislative efforts across the country reflect a persistent and intensive effort to offer more protection for life through a variety of proposals and enactments including comprehensive abortion bans to become effective in the event *Roe* is overturned.

(23) The Legislature finds that further evidence of the evolving standards of decency concerning unborn human life is found in the subsequent action taken by Norma McCorvey, formerly known as Jane Roe, the appellant of the *Roe v. Wade* opinion. Ms. McCorvey has changed her mind concerning the wisdom of the *Roe v. Wade* opinion and filed a motion under Rule 60(b), Federal Rules of Civil Procedure, with the district court in an effort to have it revisit the Supreme Court's *Roe v. Wade* decision in order to reverse its effect. (See *McCorvey v. Hill*, 385 F.3d 846, (5th Cir. 2004)). In seeking relief, Ms. McCorvey submitted "serious and substantial evidence" which went "to the heart of the balance *Roe* struck between the choice of a mother and the life of her unborn child." (See Judge Edith H. Jones, concurring, *McCorvey*, supra at 850).

(24) The Legislature finds that it is axiomatic that the Constitution of the State of Florida cannot provide less protection for the right to life than that which is provided in the United States Constitution and therefore this act could not be properly declared unconstitutional under the State

Constitution if the right to life is protected to a greater extent than the right of a woman to obtain an abortion when not necessary in defense of her own life.

(25) The Legislature finds that the decision of whether or not to have an abortion is a decision regarding whether a pregnant woman will carry her unborn child through to a point in time when there is a reasonable expectation that it will result in the live birth of a child capable of sustaining life outside the mother's womb with or without artificial support. Further, the Legislature finds that the decision regarding having an abortion is a separate and distinct decision from one concerning whether or not the pregnant woman will keep and be a parent to the child.

(26) The Legislature finds that adoption is a viable and preferable alternative to abortion for women with unwanted pregnancies.

(27) The Legislature finds that the United States Supreme Court's jurisprudence on the minimum constitutional requirements for statutes requiring parental notification of minors seeking abortions lacks clarity and has provided this state with inadequate guidance leaving its legislature to guess as to what actions can be taken to grant full protection of the laws to the fundamental right of parents to make decisions concerning the care, custody, upbringing, and control of their children. (See *Troxel v. Granville*, 530 U.S. 57 (2000)). Specifically, the United States Supreme Court has failed to definitively address whether judicial bypass provisions of the type in *Bellotti v.*

Baird, 443 U.S. 622 (1979), are constitutionally required for one-parent notification statutes.

(28) The Legislature finds, based on data obtained from the Office of the State Courts Administrator for Florida for calendar years 2006, 2007, and 2008, that judicial waivers of minors petitioning to obtain abortions without parental notification have been granted at an average rate of 95 percent, rendering its Parental Notification Act of 2005 virtually meaningless and ineffective at providing parents with notice of their minor's intention to seek an abortion. The Legislature finds that the ineffectiveness of its parental notification statute is due primarily, if not entirely, on the inclusion of a judicial bypass provision which may not be constitutionally necessary.

(29) The Legislature also finds that the ex parte nature of judicial bypass provisions in parental notification statutes deprives parents of minors of their fundamental right regarding the care, custody, upbringing, and control of their children without due process of law.

(30) The Legislature finds that it has long been the public policy of this state that minors under 16 years of age cannot lawfully consent to sexual intercourse with another person. The Legislature further finds that the fact that a minor is under 16 years of age and pregnant is sufficient cause to warrant further investigation by appropriate law enforcement agencies or the Department of Children and Family Services into the commission of a crime against the minor. The Legislature finds that without the knowledge that their minor child is

pregnant or is considering an abortion, parents may never learn of the fact that their minor child has been the victim of a crime and may forever lose the opportunity to report the crime to the proper authorities. The Legislature further finds that the present United States Supreme Court jurisprudence respecting parental notification statutes impedes the state's interest in prosecuting offenders committing sexual crimes against minors and facilitates the destruction of evidence in connection with such crimes.

(31) The Legislature urges the United States Supreme Court to overturn *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833 (1992), without delay and return this moral and political question back to the people to decide through their respective legislatures consistent with the principles of the Constitution of the United States as established and ordained by the people of the United States and consistent with the principles of a free society governed as a nation of laws and not as a nation of men.

Section 3. Section 390.011, Florida Statutes, is repealed.

Section 4. Section 390.01113, Florida Statutes, is created to read:

390.01113 Abortion unlawful; termination of pregnancies circumstances authorized.—

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

(a) "Induced abortion" means a medically initiated termination of a human pregnancy with the intent to kill a human embryo or fetus which is not dying of natural causes. For

purposes of this paragraph, the term "medically initiated" refers to the ingestion or administration of pharmaceutical abortifacients by any means, surgical procedures, or use of any device or instrument, as well as any combination thereof.

(b) "Medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function or unreasonably reduce the likelihood of successful treatment of a life-threatening disease.

(c) "Patient" means the woman or minor upon whom an abortion or termination of pregnancy is performed or induced.

(d) "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.

(e) "Termination of pregnancy" means the termination of a human pregnancy under circumstances not prohibited by this section.

(f) "Viability" means that stage of fetal development when, in the judgment of a physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available, there is a reasonable probability of sustained survival of the unborn child outside his or her mother's womb with or without artificial support.

(2) INDUCED ABORTION PROHIBITED.—

(a) Induced abortion for any purpose is unlawful. Any person who induces, performs, attempts to perform, or assists another in the performance of an induced abortion on another person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who during the course of performing an induced abortion on another person inflicts serious bodily injury on the person commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who during the course of performing an induced abortion on another person inflicts serious bodily injury on the person which results in the death of the person commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) OPERATING ABORTION SERVICES PROHIBITED.—A person who operates any facility, business, or service from any location within this state for the purpose of providing induced abortion services commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) TERMINATION OF PREGNANCY.—A termination of pregnancy may not be performed unless:

(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary to prevent the death of the pregnant woman;

(b) Two physicians certify in writing to the fact that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary because to continue the pregnancy would unreasonably reduce the likelihood of successful treatment of a life-threatening disease of the pregnant woman; or

(c) A physician certifies in writing that a medical emergency existed and another physician was not available for consultation prior to the time necessary to perform the termination of pregnancy. The physician's written certification must clearly describe the medical emergency.

(5) PERFORMANCE BY PHYSICIAN REQUIRED.—No termination of pregnancy may be performed at any time except by a physician.

(6) CONSENTS REQUIRED.—A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the patient or, in the case of a mentally incompetent patient, the voluntary and informed written consent of her court-appointed guardian or, in the case of a minor patient, notwithstanding s. 743.065, the voluntary informed consent of the minor's parent or legal guardian.

(a) Except in the case of a medical emergency, consent to a termination of pregnancy is voluntary and informed only if the physician who is to perform the procedure or the referring physician has, at a minimum, orally and in person, informed the patient, or the court-appointed guardian if the patient is mentally incompetent or a parent or guardian if the patient is a minor, of:

1. The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient similarly

situated may consider relevant to making an informed decision of whether to terminate a pregnancy.

2. The medical risks to the patient and fetus of carrying the pregnancy to term.

Nothing in this paragraph relieves a physician of his or her duty to disclose any other material fact a reasonable patient similarly situated might consider relevant to making an informed decision regarding the termination of her pregnancy.

(b) In the event a medical emergency exists and a physician cannot comply with the requirements for informed consent, a physician may terminate a pregnancy if he or she has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that, to a reasonable degree of medical certainty, the continuation of the pregnancy would threaten the life of the pregnant woman. In the event no second physician is available for a corroborating opinion, the physician may proceed but shall document reasons for the medical necessity in the patient's medical records.

(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015. Substantial compliance or reasonable belief that complying with the requirements of informed consent would threaten the life of the patient may be raised as a defense to any action brought for a violation of this subsection.

(7) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—

(a) If a termination of pregnancy is performed while the patient's fetus is viable, no person who performs or induces the termination of pregnancy shall fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus that such person would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. Notwithstanding the provisions of this subsection, the woman's life shall constitute an overriding and superior consideration to the concern for the life of the fetus, and the woman's health shall constitute an overriding and superior consideration to the concern for the health of the fetus when such life or health concerns are in conflict. For purposes of this subsection, health considerations refer to medical judgment exercised in light of factors exclusively regarding the physical well-being of the patient.

(b) Any physician who, once the matter of the fetus' viability or nonviability has been determined within a reasonable degree of medical probability, knowingly and willfully misrepresents the gestational age or stage of fetal development of a viable fetus in an entry into any medical record and who fails to use the standard of care required under paragraph (a) on any fetus determined to be viable commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—No person shall use any live fetus or live, premature infant for any type of scientific, research, laboratory, or other kind of experimentation prior to or subsequent to any termination of

pregnancy procedure except as necessary to protect or preserve the life and health of such fetus or premature infant.

(9) FETAL REMAINS.—Fetal remains shall be disposed of in a sanitary and appropriate manner and in accordance with standard health practices, as provided by rule of the Department of Health. A person who fails to dispose of fetal remains in accordance with department rules commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(10) EXCLUSION FROM APPLICATION.— The provisions of this section do not apply to the performance of a procedure that terminates a pregnancy in order to deliver a live child or to remove a dead or dying fetus whose demise was not the product of an induced abortion.

(11) CIVIL ACTIONS REGARDING ABORTION; RELIEF.—

(a) Any person inducing, performing, or assisting in the performance of an induced abortion prohibited under this section is liable for damages as provided in paragraph (b). A cause of action for damages under this subsection may be brought by the patient or her spouse, if married, her estate if the patient is deceased, or her parents or legal guardian if the patient is a minor. Any waiver of liability for a person inducing, performing, or assisting in the performance of an induced abortion is void and unenforceable.

(b) In a civil action under this subsection, appropriate relief includes:

1. Monetary damages for all injury or harm, psychological, emotional, and physical, occasioned by the violation.

2. Damages equal to three times the cost of the induced abortion.

(c) Notwithstanding any other law, an action for damages under this subsection may be commenced within 30 years after the date of the performance of the induced abortion.

(12) ADOPTION ALTERNATIVE INFORMATION.—Any physician or authorized personnel of a medical facility authorized to treat a patient who learns that a pregnant woman treated by the physician or facility personnel wishes to obtain an induced abortion at the facility or that a woman treated by the physician or facility personnel has had a termination of pregnancy at the facility under circumstances where the fetus was born alive and survives and who does not wish to keep the child shall provide the woman with information concerning the availability of adoption for her unwanted child. Compliance with this subsection may be accomplished by providing the woman with the address and telephone number of the Office of Adoption and Child Protection within the Executive Office of the Governor and informing her of the existence of the statewide list of attorneys available to provide pro bono legal services for adoption maintained by that office.

(13) PENALTIES FOR CERTAIN VIOLATIONS.—Violation of subsection (4), subsection (7), or subsection (8) by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

(14) RULEMAKING AUTHORITY.—

(a) Except for subsection (9), the Agency for Health Care Administration may adopt rules pursuant to ss. 120.536(1) and

120.54 to implement the provisions of this section. These rules shall be for the purpose of protecting the health and safety of women and unborn human life and for the purpose of securing compliance with the requirements of this section and to facilitate the enforcement of sanctions for those violations to which administrative penalties apply.

(b) The Department of Health may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of subsection (9).

Section 5. Section 390.0111, Florida Statutes, is repealed.

Section 6. Subsection (3) of section 743.065, Florida Statutes, is amended to read:

743.065 Unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.—

~~(3) Nothing in this act shall affect the provisions of s. 390.0111.~~

Section 7. Subsection (2) of section 765.113, Florida Statutes, is amended to read:

765.113 Restrictions on providing consent.—Unless the principal expressly delegates such authority to the surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a surrogate or proxy may not provide consent for:

(2) Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as described ~~defined~~ in s. 390.01113(7) ~~390.0111(4)~~.

Section 8. Section 390.0112, Florida Statutes, is repealed.

Section 9. Section 390.01114, Florida Statutes, is repealed.

Section 10. Paragraph (a) of subsection (6) of section 27.511, Florida Statutes, is amended to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(6)(a) The office of criminal conflict and civil regional counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law in civil proceedings, including, but not limited to, proceedings under s. 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and proceedings to terminate parental rights under chapter 63. Private court-appointed counsel eligible under s. 27.40 have primary responsibility for representing minors who request counsel under s. 390.01118 ~~390.01114~~, the Parental Notice of Abortion Act; however, the office of criminal conflict and civil regional counsel may represent a minor under that section if the court finds that no private court-appointed attorney is available.

Section 11. Section 390.01116, Florida Statutes, is amended to read:

390.01116 Public records exemptions; minors seeking waiver of notice requirements.—Any information that can be used to identify a minor petitioning a circuit court for a judicial

waiver, as provided in s. 390.01118 ~~390.01114~~, of the notice requirements under the Parental Notice of Abortion Act is:

(1) Confidential and exempt from s. 24(a), Art. I of the State Constitution if held by a circuit court or an appellate court.

(2)(a) Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 12. Section 390.012, Florida Statutes, is repealed.

Section 13. Section 390.014, Florida Statutes, is repealed.

Section 14. Section 390.015, Florida Statutes, is repealed.

Section 15. Section 390.018, Florida Statutes, is repealed.

Section 16. Section 390.025, Florida Statutes, is repealed.

Section 17. Section 782.30, Florida Statutes, is repealed.

Section 18. Section 782.32, Florida Statutes, is repealed.

Section 19. Section 782.34, Florida Statutes, is repealed.

Section 20. Section 782.36, Florida Statutes, is repealed.

Section 21. Subsection (6) and paragraph (c) of subsection (7) of section 39.001, Florida Statutes, are amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(6) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE, ABANDONMENT, AND NEGLECT OF CHILDREN; ADOPTION SERVICES FOR WOMEN WITH UNWANTED PREGNANCIES.—The incidence of known child abuse, abandonment, and neglect has increased rapidly in recent ~~over the past 5~~ years. The impact that abuse, abandonment, or neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse, abandonment, and neglect shall be a priority of this state. In addition, to provide assistance for women with unwanted pregnancies who would have selected abortion, if lawful in this state, rather than adoption as an alternative for their unborn child, the Legislature has determined to offer such women, through the provision of volunteer or pro bono legal services, legal representation to accomplish an appropriate adoptive placement for such newborn child. To further these ends ~~this end~~, it is the intent of the Legislature that an Office of Adoption and Child Protection be established.

(7) OFFICE OF ADOPTION AND CHILD PROTECTION.—

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (8) and revise and update the state plan as necessary.

2. Provide for or make available continuing professional

education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

d. Efforts to promote adoption.

e. Postadoptive services to support adoptive families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate

substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.

c. A summary of the child abuse prevention data collected and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.

d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.

e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.

6. Work with the direct-support organization established under s. 39.0011 to receive financial assistance.

7. Establish and manage a statewide list of attorneys providing pro bono adoption services for women with unwanted pregnancies who would have selected abortion, if lawful in this state, rather than adoption.

8. Have deposited, directed, and budgeted in the full amount for its use, in addition to funds that would have or are

otherwise budgeted for it, all moneys received by or otherwise awarded to the state from the Federal Government, the United States Treasury, or any other federal agency as a result of efforts made by the office.

Section 22. Section 390.01117, Florida Statutes, is created to read:

390.01117 Termination of pregnancies.—

(1) APPLICATION.—This section is superseded by s. 390.01113 and shall become effective only in the event that s. 390.01113 is declared unconstitutional or has its enforcement enjoined. In the event this section becomes effective, it shall supersede s. 390.0111.

(2) DEFINITIONS.—As used in this section and elsewhere in this chapter, the term:

(a) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a fetus which died of natural causes.

(b) "Abortion clinic" or "clinic" means any facility in which abortions are performed. The term does not include:

1. A hospital; or

2. A physician's office, provided that the office is not used primarily for the performance of abortions.

(c) "Agency" means the Agency for Health Care Administration.

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

(e) "Hospital" means a facility as defined in s. 395.002(12) and licensed under chapter 395 and part II of chapter 408.

(f) "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.

(g) "Viability" means that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available, there is a reasonable probability of sustained survival of the unborn child outside his or her mother's womb with or without artificial support.

(3) TERMINATION AFTER VIABILITY PROHIBITED; EXCEPTION.—No termination of pregnancy shall be performed on any human being when it has been determined, in accordance with subsection (4), that the fetus is viable unless:

(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary to prevent the death of the pregnant woman or avert a significant risk to her physical health;

(b) Two physicians certify in writing to the fact that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary because to continue the pregnancy would unreasonably reduce the likelihood of successful treatment of a life-threatening disease of the pregnant woman; or

(c) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for the termination of pregnancy and another physician is not available for consultation. The physician's written certification must clearly describe the medical emergency.

(4) DETERMINATION OF VIABILITY.—No termination of pregnancy may be induced or performed on any woman who is in the 23rd week of pregnancy or later without first obtaining an ultrasound from a physician to determine the stage of fetal development. The physician shall estimate as accurately as possible the stage of fetal development and shall indicate on the patient's medical records the gestational age, length and weight, and lung maturity of the fetus. The physician shall also indicate on the patient's medical records whether, within a reasonable degree of medical probability, the fetus is viable. The determination of viability and the performance of the ultrasound required under this subsection may not be done by a physician who provides reproductive health services at an abortion clinic.

(5) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.—

(a) A termination of pregnancy involving a viable fetus, when not prohibited in accordance with subsection (3), must be performed in a hospital or other medical facility capable of providing lifesaving or life-sustaining medical services to the viable fetus.

(b) If a termination of pregnancy is performed while the patient's fetus is viable, no person who performs or induces the termination of pregnancy shall fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Notwithstanding the provisions of this subsection, the woman's life shall constitute

an overriding and superior consideration to the concern for the life of the fetus, and the woman's health shall constitute an overriding and superior consideration to the concern for the health of the fetus when such life or health concerns are in conflict. For purposes of this section, health considerations refer to medical judgment exercised in light of factors exclusively regarding the physical well-being of the patient. Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

(c) Any physician who, once the matter of the fetus' viability or nonviability has been determined within a reasonable degree of medical probability, knowingly and willfully misrepresents the gestational age or stage of fetal development of a viable fetus in an entry into any medical record and who fails to use the standard of care required under paragraph (b) on any fetus determined to be viable commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) PERFORMANCE BY PHYSICIAN REQUIRED.—No termination of pregnancy may be performed at any time except by a physician.

(7) 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 mentally incompetent pregnant woman, the voluntary and informed written consent of her court-appointed guardian or, in the case of a pregnant minor, notwithstanding s. 743.065, the voluntary informed consent of the minor's parent or 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 and in person, informed the pregnant woman, or the court-appointed guardian if the pregnant woman is mentally incompetent or a parent or guardian in the case of a pregnant minor, of:

a. The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient similarly situated may consider relevant to making an informed decision of whether to terminate a pregnancy.

b. The probable gestational age of the fetus at the time the termination of pregnancy is to be performed.

c. The medical risks to the woman and fetus of carrying the pregnancy to term.

d. If an ultrasound has been performed and it reveals the sex of the fetus, she shall be advised of the fact that the sex of the fetus has been determined. The sex of the fetus may be disclosed only upon the request of the pregnant woman.

e. All other factors, physical, emotional, psychological, and familial, relevant to the short-term and long-term well-being of the patient, including emotional and psychological impact relating to the loss of the life of a child.

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 fetus.

b. A list of agencies 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 relieves a physician of his or her duty to disclose any other material fact a reasonable patient similarly situated might consider relevant to making an informed decision regarding the termination of her pregnancy.

(b) In the event a medical emergency exists and a physician cannot comply with the requirements for informed consent, a physician may terminate a pregnancy if he or she has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that, to a reasonable degree of medical certainty, the continuation of the pregnancy would threaten the life of the pregnant woman. In the event no second physician is available for a corroborating opinion, the physician may proceed but shall document reasons for the medical necessity in the patient's medical records.

(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015. Substantial compliance or reasonable belief that complying with the requirements of informed consent would threaten the life or health of the patient may be raised as a defense to any action brought under this subsection.

(8) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—No person shall use any live fetus or live, premature infant for any type of scientific, research, laboratory, or other kind of experimentation prior to or subsequent to any termination of pregnancy procedure except as necessary to protect or preserve the life and health of such fetus or premature infant. Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

(9) FETAL REMAINS.—Fetal remains shall be disposed of in a sanitary and appropriate manner and in accordance with standard health practices, as provided by rule of the Department of Health. A person who fails to dispose of fetal remains in accordance with department rules commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(10) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE.—Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital, nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who states an objection to such procedure on moral or religious grounds shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

(11) EXCLUSION FROM APPLICATION.—The provisions of this section do not apply to the performance of a procedure that terminates a pregnancy in order to deliver a live child or to remove a dead or dying fetus whose demise was not the product of an induced abortion.

(12) PENALTIES FOR VIOLATION.—

(a) Any person who willfully induces, performs, or assists in a termination of pregnancy procedure on another person in violation of the requirements of subsection (4), paragraph (5)(a), or subsection (6) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully induces, performs, or assists in a termination of pregnancy procedure on another person in violation of subsection (3) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who willfully induces, performs, or assists in a termination of pregnancy procedure on another person in violation of subsection (3) which results in serious bodily injury to the person commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Any person who induces, performs, or assists in a termination of pregnancy procedure on another person in violation of the provisions of this section which results in the death of the person commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(13) CIVIL ACTIONS REGARDING ABORTION; RELIEF.—

(a) Any person inducing, performing, or assisting in the performance of an induced abortion is liable for damages as provided in paragraph (b). A cause of action for damages under this subsection may be brought by the patient or her spouse, if married, her estate if the patient is deceased, or her parents or legal guardian if the patient is a minor. Any waiver of liability for a person inducing, performing, or assisting in the performance of an induced abortion is void and unenforceable.

(b) In a civil action under this subsection, appropriate relief includes:

1. Monetary damages for all injury or harm, psychological, emotional, and physical, occasioned by the abortion or by the failure to comply with the consent requirements of subsection (7).

2. Damages equal to three times the cost of the induced abortion.

(c) Notwithstanding any other law, an action for damages under this subsection may be commenced within 30 years after the date of the performance of the abortion.

(14) ADOPTION ALTERNATIVE INFORMATION.—Any physician or authorized personnel of a medical facility who learns that a pregnant woman treated by the physician or facility personnel wishes to obtain an induced abortion of a viable fetus at the facility under circumstances prohibited by this section or that a woman treated by the physician or facility personnel has had a termination of pregnancy at the facility under circumstances where the fetus was born alive and survives and who does not wish to keep the child shall provide the woman with information

concerning the availability of adoption for her unwanted child. Compliance with this subsection may be accomplished by providing the woman with the address and telephone number of the Office of Adoption and Child Protection within the Executive Office of the Governor and informing her of the existence of the statewide list of attorneys available to provide pro bono legal services for adoption maintained by that office.

(15) RULEMAKING AUTHORITY.—Except for subsection (9), the Agency for Health Care Administration may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. These rules shall be for the purpose of protecting the health and safety of women and unborn human life. These rules are also for the purpose of securing compliance with the requirements of this section and to facilitate the enforcement of sanctions for those violations to which administrative penalties apply. The Department of Health may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of subsection (9). The rulemaking authority granted in this subsection is supplemental to the rulemaking authority provided in s. 390.012.

Section 23. If section 22 of this act, creating s. 390.01117, Florida Statutes, is declared unconstitutional or has its enforcement enjoined, the repeal of s. 390.011, Florida Statutes, in section 3 of this act, and the provisions of section 21 of this act, amending section 39.001, Florida Statutes, shall be deemed to be void and of no effect, it being the legislative intent that these provisions would not have been adopted had the provisions of section 4 of this act, creating s.

390.01113, Florida Statutes, or section 22 of this act, creating s. 390.01117, Florida Statutes, not been included.

Section 24. Section 390.01118, Florida Statutes, is created to read:

390.01118 Parental notice of abortion.—

(1) SECTION SUPERSEDED.—This section is superseded by s. 390.01113 and shall become effective only in the event that s. 390.01113 is declared unconstitutional or has its enforcement enjoined.

(2) LEGISLATIVE FINDINGS.—

(a) The Legislature enacted s. 390.01114, the "Parental Notice of Abortion Act," in 2005 to implement s. 22, Art. X of the State Constitution. Section 390.01114(6) required annual reporting to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed seeking a judicial waiver of the act's notice requirements and on the timing and manner of disposal of such petitions.

(b) Data collected in compliance with the reporting requirements of s. 390.01114(6) revealed that in 2006, 2007, and 2008 petitions seeking judicial waiver of that act's notification requirements were granted in over 94 percent of the cases in which a petition for judicial waiver was filed.

(c) The Legislature finds that human life is precious and that a decision to have an abortion is among the most difficult decisions a person may make during her lifetime and one which a minor should not make alone. The Legislature further finds that s. 22, Art. X of the State Constitution embodies a public policy

to protect the fundamental right of parents in the care, custody, and management of their minor children which includes providing an unmarried pregnant minor help and advice in making the very important decision of whether or not to bear a child.

(3) APPLICATION.—This section supersedes s. 390.01114 in its entirety unless it is found unconstitutional, in which case s. 390.01114 shall apply in lieu of this section.

(4) DEFINITIONS.—As used in this section, the term:

(a) "Actual notice" means notice that is given directly, in person, or by telephone to a parent or legal guardian of a minor by a physician at least 48 hours before the inducement or performance of an abortion and documented in the minor's medical record.

(b) "Child abuse" means aggravated child abuse, child abuse, or neglect of a child, as defined in s. 827.03.

(c) "Constructive notice" means notice that is given in writing, signed by the physician, and mailed at least 72 hours before the inducement or performance of the abortion to the last known address of the parent or legal guardian of the minor by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After the 72 hours have passed, delivery is deemed to have occurred.

(d) "Family member" means a parent, stepparent, sibling, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married.

(e) "Medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

(f) "Minor" means a person under the age of 18 years.

(g) "Sexual activity" has the same meaning as provided in s. 800.04.

(h) "Sexual exploitation" means allowing, encouraging, or forcing the minor to engage in prostitution as defined in s. 796.07 or a sexual performance as defined in s. 827.071.

(i) "Unfit" means that the parents or legal guardian abused, abandoned, or neglected the minor, as those terms are defined in s. 39.01.

(5) NOTIFICATION REQUIRED.—

(a) Actual notice shall be provided by the physician performing or inducing the abortion or by a referring physician before the performance or inducement of the abortion on a minor. Regardless of whether actual notice is provided by the physician performing or inducing the abortion or by the referring physician, the physician performing or inducing the abortion must affirm that actual notice has been provided. Before affirming that actual notice has been provided, the physician who performs or induces the abortion must receive a written statement of the referring physician certifying that the referring physician has given notice. If actual notice is not

possible after a reasonable effort has been made, the physician performing or inducing the abortion or the referring physician must give constructive notice. Notice given under this subsection by the physician performing or inducing the abortion must include the name and address of the facility providing the abortion and the name of the physician providing notice. Notice given under this subsection by a referring physician must include the name and address of the facility where he or she is referring the minor and the name of the physician providing notice. If actual notice is provided by telephone, the physician must actually speak with the parent or legal guardian and must record in the minor's medical file the name of the parent or legal guardian provided notice, the phone number dialed, and the date and time of the call. If constructive notice is given, the physician must document that notice by placing copies of any document related to the constructive notice, including, but not limited to, a copy of the letter and the return receipt, in the minor's medical record. If actual notice is provided by telephone, the physician shall also send written notice confirming the actual notice provided by telephone to the last known address of the parent or legal guardian of the minor by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian within 48 hours after performing the abortion.

(b) The notice required in paragraph (a) is not required if:

1. In the physician's good faith clinical judgment a medical emergency exists and there is insufficient time for the

attending physician to comply with the notification requirements of this subsection. In the event an abortion is performed as the result of a medical emergency, the physician must document in writing in the minor's medical records the nature of the medical emergency that existed which preceded or necessitated the performance of the abortion and the reason the abortion procedure was necessary to avert the minor's death or otherwise avert a serious risk of substantial and irreversible impairment of a major bodily function of the minor. Subsequent to an abortion performed on a minor due to a medical emergency, the physician shall notify the minor's parent or legal guardian of the abortion within 24 hours after the abortion procedure. The physician performing the abortion who treated the minor's medical emergency shall provide the parent or legal guardian with a copy of the medical record documenting the reason the abortion was necessary as described in this subparagraph if requested by the parent or legal guardian. The Legislature finds that abortions performed pursuant to this exception are performed solely due to exigent circumstances arising from a bona fide medical emergency and are not performed on minors exercising a personal choice to obtain an abortion without parental notice. Therefore, no provision for waiver of the post-abortion parental notification required under this subparagraph is necessary, appropriate, or authorized.

2. The minor obtains a waiver of the notification requirement pursuant to subsection (6) and provides the attending physician with a certified copy of the court order

granting the petition for waiver issued pursuant to that subsection.

(c) Violation of this subsection by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015.

(6) JUDICIAL WAIVER OF NOTICE OF PARENT OR GUARDIAN.—

(a) The Legislature finds that judicial waiver proceedings are conducted in a nonadversarial manner and that frequently the only person providing testimonial evidence to the court is the minor seeking the judicial waiver. The Legislature further finds that while the parent or legal guardian has a fundamental liberty interest in the rearing and raising of his or her children, that interest is not represented in these proceedings. The Legislature finds that the United States Supreme Court has approved parental notification statutes which provide for ex parte hearings without addressing the deprivation of the fundamental liberty interest of fit parents to rear and raise their children. This Legislature therefore accommodates such waiver proceedings in this subsection. The Legislature urges the United States Supreme Court to carefully reexamine the governmental intrusion into the parent-child relationship of such bypass provisions and the ongoing and routine denial of the fundamental liberty interest of parents without due process of law that its current jurisprudence has condoned but not specifically addressed with respect to one-parent notification statutes.

(b) A minor may petition the circuit court in which she resides for a waiver of the notice requirements of subsection (5) under any of the following circumstances:

1. The minor is or has been married or has had the disability of nonage removed under s. 743.015 or a similar statute of another state, and the minor has provided to the court a certified copy of the marriage certificate, divorce decree, or court order showing removal of disability of nonage. A marriage annulment does not satisfy this exception to the notice requirements of subsection (5).

2. The minor's parents are or legal guardian is currently unaware of the pregnancy, and the minor or her sibling has previously been the victim of child abuse by a parent or legal guardian with whom she currently resides, regardless of whether the parent or legal guardian has been previously charged or convicted of child abuse.

3. The minor's pregnancy was the result of sexual activity with a family member or sexual exploitation by a family member.

4. It is in the minor's best interest to have an abortion without first seeking the advice and support of her parents or legal guardian. In making this determination there is a rebuttable presumption that it is in the minor's best interest to have the support and advice of her parents or legal guardian when deciding whether to have an abortion. The minor has the burden of overcoming the presumption by clear and convincing evidence that her parents are or legal guardian is unfit to offer advice, support, or guidance to the minor regarding the best course of action for her pregnancy. A finding that a

minor's parents are or legal guardian is unfit may not be based solely on the testimony of the minor seeking the abortion. If the court finds the parents or legal guardian unfit under this paragraph, it must set forth specific findings of fact in support of that conclusion.

5. From the date of filing the petition, the minor is 190 days or less from reaching 18 years of age and has demonstrated that she is sufficiently mature to decide whether to have an abortion without any advice, support, or guidance from her parents or legal guardian. In determining whether the minor is sufficiently mature, the court must find that the following criteria have been proven:

a. That neither of the minor's parents nor her legal guardian is currently aware of the pregnancy.

b. That the minor understands the consequences of her decision to her and her unborn child.

c. That the minor has given thorough and mature consideration of the alternatives to abortion.

d. That the minor understands that the decision to have an abortion once acted upon is irrevocable and terminates a human life.

e. That the decision of the minor to seek an abortion without notification to her parents or legal guardian is not the result of improper or undue influence of another person. For purposes of this sub-subparagraph, improper or undue influence may be found in circumstances, including, but not limited to, where another person who stands to monetarily benefit from the performance of an abortion has encouraged the minor's decision

to have an abortion or discouraged the minor from considering alternatives, or any circumstance where there is a reasonable probability that, absent the influence of another person, the minor would not be seeking an abortion or seeking to avoid parental involvement in her decision.

(c) The court shall appoint a guardian ad litem for a minor seeking a waiver under this subsection. The guardian ad litem shall maintain the confidentiality of the proceedings. The circuit court shall appoint legal counsel for a minor seeking a waiver under this subsection upon her request and at no cost.

(d) Court proceedings under this subsection must be given precedence over all other pending matters as necessary to ensure that the court reaches a decision promptly. The court shall conduct a hearing, rule, and issue written findings of fact and conclusions of law within 48 hours, excluding Saturdays and Sundays, after the petition is filed, except that the 48-hour limitation may be extended at the request of the minor. The chief judge of the circuit shall be responsible for ensuring the assignment of the petition to a judge capable of complying with the time requirements of this paragraph. Failure of the assigned judge to rule within 48 hours shall not constitute an order granting or denying the petition but may be considered nonfeasance in office. Any petition not ruled upon within the 48-hour period shall be immediately forwarded to the chief judge of the circuit who shall issue a ruling within 24 hours after the expiration of the 48-hour period. The chief judge of the circuit shall report to the Judicial Qualifications Commission and to the Speaker of the House of Representatives and the

President of the Senate the name of any judge assigned to a petition who fails to rule within the 48-hour period required under this paragraph.

(e) The court may receive evidence on any issue of fact necessary to rule on the petition and may on its own motion examine and review public records, records of the Comprehensive Case Information System, and any other records which may be judicially noticed under s. 90.202. If the court finds that the minor has demonstrated by clear and convincing evidence that she qualifies for a waiver under paragraph (b), the court shall issue an order granting the petition for waiver. In cases where the waiver is granted pursuant to subparagraph (b)3., the order granting the petition shall include a finding that the minor is a victim of sexual activity with a family member or sexual exploitation by a family member. In cases where the court grants the petition pursuant to subparagraph (b)2. or subparagraph (b)3., the court shall forward a copy of such order to the Department of Children and Family Services. If the court finds that the minor has failed to establish her qualification for a waiver under paragraph (b) by clear and convincing evidence, the court shall deny the petition. All orders issued pursuant to this subsection shall indicate the minor's age.

(f) A court that conducts proceedings under this subsection shall provide for a written transcript of all testimony and proceedings and issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's

findings and conclusions be maintained as required under s. 390.01116.

(g) An expedited confidential appeal shall be available, as the Supreme Court provides by rule, to any minor denied a waiver pursuant to this subsection.

(h) No filing fees or court costs shall be required of any pregnant minor who petitions a court for a waiver of parental notification under this subsection at the trial or the appellate level.

(i) No county shall be obligated to pay the salaries, costs, or expenses of any counsel appointed by the court under this subsection.

(7) REPORT.—The Supreme Court, through the Office of the State Courts Administrator, shall report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed under subsection (6) for the preceding year and the timing and manner of disposal of the petitions by each circuit court.

Section 25. If section 4 of this act, creating s. 390.01113, Florida Statutes, is declared unconstitutional or has its enforcement enjoined, the statutory repeals and amendments contained in sections 5 through 20 of this act shall be deemed to be void and of no effect, and the text of any amended provisions shall revert to that in existence on the effective date of this act, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate, it being the legislative intent that these

provisions would not have been adopted had the provisions of section 4 of this act, creating s. 390.01113, Florida Statutes, not been included.

Section 26. It is the intent of the Legislature that if any provisions of this act are held invalid, such invalidity shall not affect the validity of section 2 of this act, creating s. 390.0001, Florida Statutes, and to this end section 2 of this act, creating s. 390.0001, Florida Statutes, is severable from all other provisions of this act.

Section 27. This act shall take effect July 1, 2011.