

CHAPTER 2020-31

Committee Substitute for Committee Substitute for Senate Bill No. 698

An act relating to reproductive health; amending s. 456.072, F.S.; providing grounds for disciplinary action; amending s. 456.074, F.S.; requiring the department to immediately suspend the license of certain health care practitioners under certain circumstances; creating s. 456.51, F.S.; defining the term “pelvic examination”; prohibiting health care practitioners and certain students from performing a pelvic examination on a patient without first obtaining the written consent of the patient or the patient’s legal representative; providing exceptions; amending ss. 458.331 and 459.015, F.S.; providing grounds for disciplinary action; creating s. 784.086, F.S.; defining terms; establishing the criminal offense of reproductive battery; providing criminal penalties; providing an exception; tolling the period of limitations; providing that a recipient’s consent to an anonymous donor is not a defense to the crime of reproductive battery; providing effective dates.

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

Section 1. Paragraph (pp) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(pp) Intentionally implanting a patient or causing a patient to be implanted with a human embryo without the recipient’s consent to the use of that human embryo, or inseminating a patient or causing a patient to be inseminated with the human reproductive material, as defined in s. 784.086, of a donor without the recipient’s consent to the use of human reproductive material from that donor.

Section 2. Subsection (1) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.—

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

(a) A felony under chapter 409, chapter 817, or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396; or

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

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

Section 3. Section 456.51, Florida Statutes, is created to read:

456.51 Consent for pelvic examinations.—

(1) As used in this section, the term “pelvic examination” means the series of tasks that comprise an examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to, the health care provider’s gloved hand or instrumentation.

(2) A health care practitioner, a medical student, or any other student receiving training as a health care practitioner may not perform a pelvic examination on a patient without the written consent of the patient or the patient’s legal representative executed specific to, and expressly identifying, the pelvic examination, unless:

(a) A court orders performance of the pelvic examination for the collection of evidence; or

(b) The pelvic examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the patient.

Section 4. Paragraph (ww) is added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(ww) Implanting a patient or causing a patient to be implanted with a human embryo created with the human reproductive material, as defined in s. 784.086, of the licensee, or inseminating a patient or causing a patient to be inseminated with the human reproductive material of the licensee.

Section 5. Paragraph (yy) is added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(yy) Implanting a patient or causing a patient to be implanted with a human embryo created with the human reproductive material, as defined in s. 784.086, of the licensee, or inseminating a patient or causing a patient to be inseminated with the human reproductive material of the licensee.

Section 6. Effective October 1, 2020, section 784.086, Florida Statutes, is created to read:

784.086 Reproductive battery.—

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

(a) “Donor” means a person who donates reproductive material, regardless of whether for personal use or compensation.

(b) “Health care practitioner” has the same meaning as provided in s. 456.001.

(c) “Recipient” means a person who receives reproductive material from a donor.

(d) “Reproductive material” means any human “egg” or “sperm” as those terms are defined in s. 742.13, or a human zygote.

(e) “Zygote” means a fertilized ovum.

(2) A health care practitioner may not intentionally transfer into the body of a recipient human reproductive material or implant a human embryo of a donor, knowing the recipient has not consented to the use of the human reproductive material or human embryo from that donor.

(a) A health care practitioner who violates this section commits reproductive battery, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A health care practitioner who violates this section and who is the donor of the reproductive material commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding any other provision of law, the period of limitation for a violation under this section does not begin to run until the date on which the violation is discovered and reported to law enforcement or any other governmental agency.

(4) It is not a defense to the crime of reproductive battery that the recipient consented to an anonymous donor.

Section 7. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

Approved by the Governor June 18, 2020.

Filed in Office Secretary of State June 18, 2020.