SAFE HARBOR FOR LIFE ORDINANCE

BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY

BILL No. _____

By County Commissioner Member _____

Section 1. Title.

This Ordinance may be known and cited as the "Safe Harbor for Life Ordinance."

Section 2. Findings and Purpose.

(a) The Board of County Commissioners of Indian River County, Florida finds that:

(1) The State of Florida and its municipal entities, including Indian River County, have "legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992). More specifically, the State and its municipalities have "a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 428-29 (1983).

(2) Article VIII Section 2(b) of the Florida Constitution has conferred home rule powers upon its municipalities.

(i) The Florida legislature has clarified that the grant of home rule powers "shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution." Fla. Stat. § 166.021(4).

(ii) The Florida legislature recognizes that "Any county or municipality may enact, in a manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules adopted by the department." Fla. Stat. § 381.0016.

(iii) Through its broad home rule powers, the State of Florida has conferred upon Indian River County a legitimate interest in regulating abortion providers to ensure health and safety conditions in abortion clinics meet medical industry standards.

(3) Regarding late-term pregnancy:

(i) Abortion can cause serious physical and psychological (both short- and long-term) complications for women, including but not limited to: uterine perforation, uterine scarring, cervical perforation or other injury, infection, heavy bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic

disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm birth in subsequent pregnancies, free fluid in the abdomen, organ damage, adverse reactions to anesthesia and other drugs, psychological or emotional complications including depression, anxiety, sleeping disorders, an increased risk of breast cancer, and death.

(ii) Abortion has a higher medical risk when the procedure is performed later in pregnancy. Compared to an abortion at eight (8) weeks gestation or earlier, the relative risk increases exponentially at higher gestations. L. Bartlett et al., *Risk factors for legal induced abortion-related mortality in the United States*, OBSTETRICS & GYNECOLOGY 103(4):729 (2004).

(iii) In fact, the incidence of major complications is highest after twenty (20) weeks of gestation. J. Pregler & A. DeCherney, WOMEN'S HEALTH: PRINCIPLES AND CLINICAL PRACTICE 232 (2002).

(iv) According to the Alan Guttmacher Institute, the risk of death associated with abortion increases with the length of pregnancy, from one death for every one million abortions at or before eight weeks gestation to one per 29,000 abortions at 16 to 20 weeks' gestation and one per 11,000 abortions at 21 or more weeks gestation (citing L. Bartlett et al., *Risk factors for legal induced abortion-related mortality in the United States*, OBSTETRICS & GYNECOLOGY 103(4):729–737 (2004)).

(v) After the first trimester, the risk of hemorrhage from an abortion is greater and the resultant complications may require a hysterectomy, other reparative surgery, or a blood transfusion.

(vi) In addition, there is substantial and well-documented medical evidence that an unborn child by at least 20 weeks' gestation has the capacity to feel pain during an abortion. K. Anand, *Pain and its effects in the human neonate and fetus*, N.E.J.M. 317:1321 (1987).

(4) Regarding abortion-inducing drugs:

(i) In September 2000, the Food and Drug Administration (FDA) approved the distribution and use of RU-486, an abortion-inducing drug, under the rubric of 21 C.F.R. § 314.520, also referred to as "Subpart H," which is the only FDA approval process that allows for post-marketing restrictions. Specifically, the Code of Federal Regulations (CFR) provides for accelerated approval of certain drugs that are shown to be effective but "can be safely used only if distribution or use is restricted."

(ii) The FDA does not treat Subpart H drugs in the same manner as drugs which undergo the typical approval process.

(iii) In September 2000, the FDA prescribed a specific gestation, dosage, and administration protocol for RU-486.

(iv) The approved FDA protocol for RU-486 was modified in March 2016; however, the new FDA guidelines maintain that certain distribution restrictions are still necessary because of the drug's potential for serious complications.

(v) As approved by the FDA, the new administration protocol consists of mifepristone, followed by misoprostol taken 24 to 48 hours later, through seventy (70) days LMP (a gestational measurement using the first day of the woman's "last menstrual period" as a marker). The patient is to return for a follow-up visit to confirm that a complete abortion has occurred.

(vi) The new FDA protocol also requires that the distribution and use of RU-486 be under the supervision of a qualified healthcare provider who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention (or has made plans to provide surgical intervention through another qualified physician).

(vii) Court testimony by Planned Parenthood and other abortion providers has demonstrated that providers routinely and intentionally failed to follow the September 2000 FDA-approved protocol for RU-486. *See*, *e.g.*, *Planned Parenthood Cincinnati Region v. Taft*, 459 F. Supp. 2d 626 (S.D. Oh. 2006).

(viii) The use of RU-486 presents significant medical risks including, but not limited to, abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, viral infections, and pelvic inflammatory disease.

(ix) The risk of complications increases with advancing gestational age and with the failure to complete the two-step dosage process for RU-486.

(x) Studies document that increased rates of complications (including incomplete abortion) occur even within the FDA-approved gestational limit.

(xi) In July 2011, the FDA reported 2,207 adverse events after women used RU-486 for abortions. Among these events were 14 deaths, 612 hospitalizations, 339 blood transfusions, and 256 infections (including 48 "severe infections").

(xii) The Adverse Event Reports (AER) systems relied upon by the FDA have limitations and typically detect only a small proportion of events that actually occur.

(xiii) "Off-label" or so-called "evidence-based" use of RU-486 may be deadly. To date, 14 women have reportedly died after administration of RU-486, with eight deaths attributed to severe bacterial infections. All eight of those women administered RU-486 in an "off-label" or "evidence-based" manner then-advocated by abortion providers. The FDA has not been able to determine whether this off-label use led to the deaths.

(xiv) Medical evidence demonstrates that women who use abortion-inducing drugs risk more complications than those who undergo surgical abortions.

(xv) The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences." *Planned Parenthood v. Danforth,* 428 U.S. 52, 67 (1976).

(xvi) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives information sufficient to make an informed choice.

(xvii) Many women come to regret their decision to abort shortly after ingesting mifepristone, the first drug in the RU-486 regimen.

(xviii) In recent years, physicians have developed a method to potentially reverse the effects of mifepristone. This abortion pill reversal process, which has been discussed in a peer-reviewed study, is based upon a well-established medical regimen that is used in other areas of healthcare—specifically, methotrexate and "leucovorin rescue."

(xix) Methotrexate, a chemotherapy drug, kills rapidly dividing cells (cancer cells). It works by blocking the action of folic acid. Typically, physicians allow the methotrexate to work for a day or two, and then give the patient a high dose of folic acid (leucovorin) to compensate for what has been lost. This high dosage of folic acid, in essence, "kicks" the methotrexate off of the cells. This flooding of the patient's body with folic acid is called a "leucovorin rescue" and is a well-established medical procedure.

(xx) Understanding the science behind the mechanism of action of mifepristone has allowed physicians to design a specific "rescue" for a woman who has used mifepristone to induce an abortion, but has not yet ingested the second drug in the RU-486 regimen. Since physicians know exactly how mifepristone works (*i.e.*, by blocking progesterone), physicians know that treating a woman with progesterone can "kick off" the mifepristone (*i.e.*, displace mifepristone from the progesterone receptors). This allows the woman's body to respond naturally to the progesterone and to effectively fight the effects of the mifepristone-induced blockage.

(xxi) In short, mifepristone floods the progesterone receptors (thus, blocking progesterone). To block or the effects of the mifepristone, a pregnant woman's body is flooded with progesterone.

(xxii) Progesterone itself has been used safely in pregnancies for decades. It is used in *in vitro* fertilization, infertility treatments, and high-risk pregnancies (such as those experiencing pre-term labor). Using progesterone to rescue an embryo or fetus from the effects of mifepristone is a targeted response that is safe for the woman.

(xxiii) Over a thousand healthy infants have been born following this rescue process. See Heartbeat International, "Abortion Pill Rescue Network," https://www.heartbeatinternational.org/our-work/apr.

(xxiv) To facilitate reliable scientific studies and research on the safety and efficacy of abortion-inducing drugs, it is essential that the medical and public health communities have access to accurate information both on the efficacy and use of abortion-inducing drugs, as well as on resulting complications.

(xxv) Abortion "record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible." *Planned Parenthood v. Danforth*, 428 U.S. 80 at 52, 79-81 (1976).

(xxvi) Abortion and complication reporting provisions do not impose an "undue burden" on a woman's right to choose whether or not to terminate a pregnancy. Specifically, "[t]he collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult." *Planned Parenthood v. Casey*, 505 U.S. 833 at 900-901 (1992).

(xxvii) To promote its interest in maternal health and life, Indian River County maintains an interest in:

(A) Collecting certain demographic information on all drug-induced abortions performed in the County;

(B) Collecting information on all complications from all drug-induced abortions performed in the County; and

(C) Compiling statistical reports based on abortion complication information collected pursuant to this Ordinance for future scientific studies and public health research.

(5) Regarding prenatal discrimination:

(i) Regarding sex-selection abortion:

(A) Women are a vital part of our society and culture and possess the same fundamental human rights as men.

(B) In spite of this, sex-selection abortion, which is abortion done to prevent the birth of a child of an undesired sex, has been documented to exist, outside the U.S. and, increasingly, inside it, and the victims of sex-selection abortion are overwhelmingly female.

(C) The United States, along with other countries, has petitioned the United Nations General Assembly to declare sex-selection abortion a crime against women.

(D) Countries such as India, Great Britain, and China have taken steps to end sex-selection abortion. For example, China and India do not allow doctors to reveal the sex of an unborn child.

(E) The United States prohibits discrimination on the basis of sex in various areas including employment, education, athletics, and health insurance.

(F) It is undesirable to have a sex imbalance within a society, particularly when there is a shortage of women. Countries with high rates of male-preference have experienced ill effects as a result of an increasing number of young, unmarried men.

(G) A large population of young, unmarried men can be a cause of increased violence and militancy within a society.

(ii) Regarding abortion and Down syndrome:

(A) Persons with Down syndrome possess the same fundamental human rights as all other human beings.

(B) In spite of this, various studies have found that a high degree – in excess seventy (70) percent – of unborn children diagnosed with Down syndrome are aborted.

(C) Recent years have seen an increase in the use of amniocentesis and other prenatal testing to diagnose potential health problems in unborn children.

(D) Amniocentesis and other prenatal testing often give correct results, but also give many false-positive results.

(E) Roughly one (1) in every seven hundred (700) to one thousand (1,000) children is born with Down syndrome.

(F) Down syndrome is not considered a severe disability.

(G) In various circumstances, the United States prohibits discrimination against persons with Down syndrome.

(H) In many situations such as education, the United States requires that accommodations be made for the benefit of persons with Down syndrome.

(I) Persons with Down syndrome contribute to American culture and are a valuable part of our society.

(J) Many persons with Down syndrome are able to maintain employment, obtain an education, and live with varying degrees of independence.

(K) As technology advances and as medical treatments and educational methods improve, persons with Down syndrome will increasingly be self-dependent and productive citizens.

(iii) Regarding abortion and genetic abnormalities:

(A) Persons with physical or mental deformities or handicaps possess the same fundamental human rights as all other human beings.

(B) The United States prohibits discrimination against persons with physical or mental deformities or handicaps in various circumstances including housing and employment.

(C) In many situations, the United States requires that accommodations be made for the benefit of persons with physical or mental deformities or handicaps.

(D) In spite of this, studies have revealed that a high percentage of unborn children who are diagnosed with genetic abnormalities or a potential for genetic abnormalities are aborted.

(E) Recent years have seen an increase in the use of amniocentesis and other prenatal testing to diagnose potential health problems in unborn children.

(F) Amniocentesis and other prenatal testing often give correct results, but also give false-positive results.

(G) There are approximately four thousand (4,000) known genetic abnormalities.

(H) Persons with physical or mental deformities or handicaps contribute to American culture and are a valuable part of our society.

(I) Many persons with physical or mental deformities or handicaps are able to support themselves financially, obtain an education, and live independently.

(J) As technology advances and as medical treatments and educational methods improve, persons with physical or mental deformities or handicaps will increasingly be self-dependent and productive citizens.

(iv) Regarding maternal health:

(A) It is undisputed that abortion's risks to maternal health increases as gestation increases.

(B) The risk of death at eight (8) weeks' gestation is one death per one (1) million abortions; at sixteen (16) to twenty (20) weeks, that risk rises to one death per twenty-nine thousand (29,000) abortions; and at twenty one (21) weeks' gestation or later, the risk of death is one per every eleven thousand (11,000) abortions.

(C) This means that a woman seeking an abortion at twenty (20) weeks is thirty-five (35) times more likely to die from the abortion than she was in the first trimester. At twenty-one (21) weeks or more, she is ninety-one (91) times more likely to die from an abortion than she was in the first trimester.

(D) Because abortions performed solely based on a child's sex or genetic diagnosis are generally performed later in pregnancy, women undergoing these abortions are unnecessarily exposed to increased health risks including an exponentially higher risk of death.

(b) Based on the findings in subsection 2(a), it is the purpose of this Ordinance to:

(1) To regulate abortion facilities to ensure the health and safety of pregnant women while protecting the lives of unborn children as consistent with the public policy recognized by Indian River County, Florida in this Safe Harbor for Life Ordinance.

(2) Regarding the findings in subsection 2(a)(5) on late-term pregnancy:

(i) Based on the documented risks to women's health, to prohibit abortions at or after 20 weeks' gestation, except in cases of a medical emergency.

(ii) To prohibit abortions at or after 20 weeks' gestation, in part, because of the pain felt by an unborn child.

(3) Regarding the findings in subsection 2(a)(6) on abortion-inducing drugs:

(i) Protect the health and welfare of every woman considering a drug-induced abortion;

(ii) Ensure that a qualified healthcare provider examines a woman prior to dispensing an abortion-inducing drug in order to confirm the gestational age of the fetus prior to administering the abortion inducing drug, the intrauterine location of the fetus, and that the fetus is alive since administration of mifepristone with miscarriage is unnecessary and exposes the woman to unnecessary risks associated with both mifepristone and misoprostol;

(iii) Ensure that a qualified healthcare provider does not prescribe or dispense an abortion-inducing drug beyond the FDA-approved gestational limit;

(iv) Reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992);

(v) Ensure that every woman considering a drug-induced abortion receives comprehensive information on abortion-inducing drugs, including the potential to rescue the embryo or fetus effects of the drugs should she change her mind, and that every woman submitting to an abortion does so only after giving her voluntary and fully informed consent to the procedure; and

(vi) Promote the health and safety of women, by adding to the sum of medical and public health knowledge through the compilation of relevant data on drug-induced abortions performed in the State, as well as on all medical complications and maternal deaths resulting from these abortions.

(4) Regarding the findings in Section 2(a)(5) on prenatal discrimination:

(i) Ban abortions performed for reasons of sex-selection or diagnosed or anticipated genetic abnormalities; and

(ii) To protect women from the risks inherent in later-term abortions.

Section 3. Definitions.

As used in this Ordinance only:

(a) "**Abortion**" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

(1) Save the life or preserve the health of the unborn child;

(2) Remove a dead unborn child caused by spontaneous abortion;

(3) Remove an ectopic pregnancy; or

(4) Treat a maternal disease or illness for which the prescribed drug is indicated.

(b) "**Abortion-inducing drug**" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications (*e.g.*, chemotherapeutic agents, diagnostic drugs, etc.).

The use of such drugs to induce abortion is also known as "**medical**" or "**drug-induced**" abortion.

(c) "**Attempt to perform**" means an act or omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion.

(d) "**Conception**" means the fusion of a human spermatozoon with a human ovum.

(e) "**Consent**" means the voluntary agreement or acquiescence by a person of age and with the requisite mental capacity who is not under duress or coercion and who has knowledge or understanding of the act or action to which he or she has agreed or acquiesced.

(f) "**Department**" means the Indian River County Department of Health.

(g) "**Down syndrome**" refers to a chromosome disorder associated either with an extra chromosome twenty-one (21) (in whole or in part) or an effective trisomy for chromosome twenty-one (21). Down syndrome is sometimes referred to as "trisomy 21 syndrome."

(h) "**Genetic abnormality**" means any defect, disease, or disorder that is inherited genetically. The term genetic abnormality includes, but is not limited to: any physical disability, any mental disability or retardation, any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, Amelia, or any other type of physical or mental abnormality or disease. "**Facility**" or "**medical facility**" means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(i) "**Final printed labeling (FPL)**" means the FDA-approved informational document for an abortion-inducing drug which outlines the protocol authorized by the FDA and agreed upon by the drug company applying for FDA authorization of that drug.

(j) "**Healthcare provider**" means any individual who may be asked to participate in any way in a healthcare service, including, but not limited to, the following: a physician; physician's assistant; nurse; nurses' aide; medical assistant; hospital employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty, student, or employee; counselor; social worker; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services.

(k) "**Incompetent**" means any person who has been adjudged a disabled person and has had a guardian legally appointed for him/her.

(l) "**Infant**" means a child of the species *homo sapiens* who has been completely expulsed or extracted from his or her mother, regardless of the stage of gestational development, until the age of thirty (30) days post birth.

(m) "**LMP**" or "**gestational age**" means the time that has elapsed since the first day of the woman's last menstrual period.

(n) "**Major bodily function**" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(o) **"Mifeprex regimen"** means the abortion-inducing drug regimen that involves administration of mifepristone (brand name "Mifeprex") and misoprostol. It is the only abortion-inducing drug regimen approved by the FDA (along with a generic). It is also known as the "**RU-486 regimen**" or simply "**RU-486.**"

(p) "**Mifepristone**" means the first drug used in the Mifeprex regimen.

(q) "**Minor**" means any person under the age of eighteen (18) who is not and has not been married and has not been legally emancipated.

(r) "**Misoprostol**" means the second drug used in the Mifeprex regimen.

(s) "**Nurse**" means a person who has undergone training, passed an examination, and obtained a license from the State of Florida conferring authorization to provide care for patients. The term includes Registered Nurses (RN), Nurse Practitioners (NP), Advanced Registered Nurse Practitioners (ARNP), Licensed Practical Nurses (LPN), and Advanced Licensed Practical Nurses (ALPN), and Clinical Nurse Specialist (CNS).

(t) "**Physician**" means any person licensed to practice medicine in this State. The term includes medical doctors and doctors of osteopathy.

(u) "**Pregnant**" or "**pregnancy**" means that female reproductive condition of having an unborn child in the mother's uterus.

(v) "**Pregnant woman**" means any female, including those who have not reached the age of eighteen (18), who is in the reproductive condition of having an unborn child in her uterus.

(w) "**Premature**" or "**preterm**" means occurring prior to the thirty-seventh (37th) week of gestation.

(x) "**Probable gestational age**" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is considered, performed, or attempted.

(y) "**Qualified healthcare provider**" means a healthcare provider licensed in this State who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention or has made plans to provide surgical intervention through another qualified physician; provided, however, that in no event shall the term be construed to authorize any individual to provide abortion who is not authorized to do so pursuant to the law of the State of Florida.

(z) "**Qualified person**" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

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

(bb) "**Sex-selection abortion**" means an abortion performed because of the sex of the unborn child.

(cc) "**Unborn child**" means the offspring of human beings from conception until birth.

(dd) "**Viability**" means the state 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 to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

Section 4. Prohibition and Reporting of Abortion Performed After 20 Weeks Gestational Age.

(a) Prohibition on late-term abortion performed after 20 weeks gestational age.

(1) No abortion shall be performed, induced, or attempted unless the physician has first made a determination of the probable gestational age of the unborn child. In making such a determination, the physician shall make such inquiries of the pregnant woman and perform or cause to be performed all such medical examinations, imaging studies, and tests as a reasonably prudent physician, knowledgeable about the medical facts and conditions of both the woman and the unborn child involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age, provided, however, that the physician shall conduct an obstetric ultrasound examination of the patient for the purpose of making the determination.

(2) No physician or person shall knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age of her unborn child has been determined to be at least twenty (20) weeks.

(b) Reporting of abortions performed after 20 weeks gestational age.

Any physician who performs an abortion pursuant to Section 4(a)(1) of this Ordinance shall report, in writing, to the medical facility in which the abortion is performed the reason(s) for the determination that a medical emergency existed. The physician's written report shall be included in a written report from the medical facility to the State Agency for Health Care Administration. If the abortion is not performed in a medical facility, the physician shall make the written report of the reason(s) for the determination that a medical emergency existed directly to the agency. The physician and the medical facility shall retain a copy of the written reports required under this Section for not less than five (5) years.

Section 5. Prohibition of Unlawful Distribution, Requirements, and Reporting of Abortion-Inducing Drugs.

(a) Prohibition of Unlawful Distribution of Abortion-Inducing Drugs.

(1) Because the failure and complication rates from a drug-induced abortion increase with advancing gestational age; because the physical symptoms of drug-induced abortion can be identical to the symptoms of ectopic pregnancy; and, because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the qualified healthcare provider giving, selling, dispensing, administering, or otherwise providing or prescribing an abortion-inducing drug must first examine the woman and document, in the woman's medical chart, the gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing an abortion-inducing drug.

(2) Every pregnant woman to whom a qualified healthcare provider gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall be provided in person with a copy of the drug's final printing label (FPL).

(3) Every qualified healthcare provider giving, selling, dispensing, administering, or otherwise providing or prescribing an abortion-inducing drug must have a signed contract with a physician who agrees to handle complications and be able to produce that signed contract on demand by the patient or by the Department. Every pregnant woman to whom a qualified healthcare provider gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall receive the name and phone number of the contracted physician.

(4) The qualified healthcare provider giving, selling, dispensing, administering, or otherwise providing or prescribing any abortion-inducing drug or an agent of the qualified healthcare provider shall inform the patient that she may schedule an appointment to take each drug included in the regimen under the supervision of the qualified healthcare provider.

(5) The qualified healthcare provider giving, selling, dispensing, administering, or otherwise providing or prescribing any abortion-inducing drug or an agent of the qualified healthcare provider shall schedule a follow-up visit for the woman at approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The qualified healthcare provider or an agent of the qualified healthcare provider shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical record.

(b) Informed Consent Requirements for Abortion-Inducing Drugs.

(1) No abortion-inducing drug shall be given, sold, dispensed, administered, or otherwise provided or prescribed without the voluntary, informed, and in person consent of the woman to whom the abortion-inducing drug is given, sold, dispensed, administered, or otherwise provided or prescribed.

(2) A form created by the Indian River Health Department shall be used by a qualified healthcare provider to obtain the consent required in person and prior to giving, selling, dispensing, administering, or otherwise providing or prescribing an abortion-inducing drug. The Health Department shall have sixty (60) days from the effective date of this Ordinance to publish a consent form in accordance with the provisions of this Ordinance. Said consent form shall be posted by United States Mail, return receipt requested, and via electronic mail to any qualified healthcare provider who provides notice to the Health Department of their intention to provide abortion-inducing drugs pursuant to this Ordinance. The form shall be deemed to have been received immediately by electronic mail and three (3) days after the date of mailing.

(3) A consent form is not valid and consent is not sufficient, unless:

(i) The patient signs the "consent statement" described in subsection 5(b)(5)(vii) in person; and

(ii) The qualified healthcare provider signs the "qualified healthcare provider declaration" described in Section 5(b)(4)(x) in person.

(4) The consent form shall include, but is not limited to, the following:

(i) The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm the gestational age;

(ii) A printed copy of the ultrasound image that is dated and time-stamped, with the presence of a fetal heart tone confirmed;

(iii) A detailed description of the drug-induced abortion regimen or procedure;

(iv) A detailed list of the risks and hazards related to the specific drug-induced abortion regimen or procedure to be used including, but not limited to hemorrhage (heavy bleeding); failure to remove all products of conception which may require an additional procedure; sepsis; sterility; and possible continuation of pregnancy;

(v) That the risks of complications from a drug-induced abortion, including incomplete abortion, increase with advancing gestational age;

(vi) That it may be possible to slow or stop the effects of the drug-induced abortion should she change her mind, but that time is of the essence;

(vii) That information on and assistance with rescuing the embryo or fetus from the effects of abortion-inducing drugs are available in printed materials available from the Indian River Health Department;

(viii) That information on and assistance with adoption services are available from the Indian River Human Services Department; and

(ix) A "consent statement" which must be signed by the patient. The consent statement must include, but is not limited to the following declarations, which must be individually initialed by the patient:

(A) That the patient understands that the abortion-inducing drug regimen or procedure will end her pregnancy and will result in the death of her unborn child;

(B) That the patient is not being forced to have an abortion, that she has the choice not to have the abortion, and that she may withdraw her consent to the abortion-inducing drug regimen or procedure;

(C) That the patient understands that the drug-induced abortion regimen or procedure to be used has specific risks and may result in specific complications;

(D) That she has been given a copy of the final printing label (FPL) of the chosen abortion-inducing drug regimen or procedure to be used.

(E) That the patient has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, alternatives to abortion, the abortion regimen or procedure to be used, and the risks and complications inherent in the regimen or procedure to be used;

(F) That she was specifically given information on the potential ability of qualified medical professionals to slow or stop the effects of an abortion obtained through the use of abortion-inducing drugs, such as mifepristone (brand name "Mifeprex"), commonly referred to as "RU-486," including information directing women to obtain further information at http://www.abortionpillreversal.com/ and by contacting (877) 558-0333 for assistance in locating a medical professional that can aide in the reversal of an abortion.

(G) That she has been provided access to printed materials prepared by Indian River County on informed consent for abortion and County-prepared and maintained Internet information on informed consent for abortion.

(H) That she has been given the name and phone number of the contracted physician who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure;

(I) That she has been informed that she may schedule an appointment to take each drug included in the abortion-inducing regimen or procedure under the direct supervision of the qualified healthcare provider;

(J) That the qualified healthcare provider or an agent of the qualified healthcare provider will schedule an in person follow-up visit for the woman

at approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug regimen or procedure to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications; and

(K) That the patient has received or been given sufficient information to give her informed consent to the abortion-inducing drug regimen or procedure.

(x) A "qualified healthcare provider declaration," which must be signed by the qualified healthcare provider, stating that the qualified healthcare provider or another qualified person has explained the abortion-inducing drug regimen or procedure to be used, has provided all of the information required in Sections 5(b)(4)(i) through 5(b)(4)(viii) hereinabove, and has answered all of the woman's questions.

(c) Information Required in County-Prepared Materials for Abortion-Inducing Drugs.

(1) The Department shall cause to be published in the County-prepared, printed materials on informed consent for abortion and the County-prepared and maintained website on informed consent for abortion the following statement:

> "Information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs, such as mifepristone (brand name "Mifeprex"), commonly referred to as "RU-486," including information directing women to obtain further information at http://www.abortionpillreversal.com/ and by contacting (877) 558-0333 for assistance in locating a medical professional that can aide in the reversal of an abortion."

(2) On an annual basis, the County Health Department shall review and update, if necessary, the statement required in subsection 5(c)(1) of this Section.

(d) Reporting on Abortion-Inducing Drugs and Drug-Induced Abortions.

(1) For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each drug-induced abortion performed shall be made to the to the County Health Department on forms prescribed by it. The reports shall be completed by the hospital or other facility in which the abortion-inducing drug was given, sold, dispensed, administered, or otherwise provided or prescribed; signed by the qualified healthcare provider who gave, sold, dispensed, administered, or otherwise provided or prescribed the abortion-inducing drug; and transmitted to the Department within fifteen (15) days after each reporting month. The Department shall in turn provide said reports to the State Agency for Health Care Administration.

(2) Each report shall include, at minimum, the following information:

(i) Identification of the qualified healthcare provider who gave, sold, dispensed, administered, or otherwise provided or prescribed the abortion-inducing drug;

(ii) Whether the abortion drug regimen or procedure was completed at the hospital or facility in which the abortion-inducing drug was given, sold, dispensed, administered, or otherwise provided or prescribed or at an alternative location;

(iii) The referring physician, agency, or service, if any;

(iv) The county and state in which the woman resides;

(v) The woman's age and race;

(vi) The number of the woman's previous pregnancies, number of live births, and number of previous abortions;

(xi) The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm the gestational age. The report will include a printed copy of the ultrasound image that is dated and time-stamped, with the presence of a fetal heart tone confirmed;

(vii) The abortion-inducing drug used and the date it was given, sold, dispensed, administered, or otherwise provided or prescribed to the woman; and

(viii) Preexisting medical condition(s) of the woman which would complicate her pregnancy, if any; and

(ix) Whether the patient returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding and the date and results of any such follow-up examination.

(3) Reports required under this subsection shall not contain:

(i) The name of the woman;

(ii) Common identifiers such as her social security number or motor vehicle operator's license number; or

(iii) Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or seeks to obtain a drug-induced abortion.

(4) The Indian River County Health Department shall forward all such reports to the State Agency for Healthcare Administration within thirty (30) days of receipt. The County Health Department shall review and assess the reports provided under this Ordinance for compliance with State law and shall refer any failure to comply to the appropriate State authority.

(5) If a qualified healthcare provider provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Sections 5(a) and 5(b) of this Ordinance, and if the qualified healthcare provider knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use of the abortion-inducing drug, an adverse event, the qualified healthcare provider shall provide a written report of the adverse event within three (3) days of the event to the FDA via the Medwatch Reporting System and to the County Health Department, which shall in turn within thirty (30) days forward the report to the State Agency for Health Care Administration.

For the purposes of this Ordinance, an "**adverse event**" shall be defined according to the FDA criteria given in the Medwatch Reporting System.

Section 6. Prohibitions on Prenatal Discrimination.

(a) Prohibition on sex-selection abortion.

(1) No person may intentionally perform or attempt to perform an abortion with the knowledge that the pregnant woman is seeking the abortion because of the sex of the unborn child.

(2) Nothing in this Section shall be construed to proscribe the performance of an abortion because the unborn child has a genetic abnormality or disorder that is linked to the unborn child's sex.

(3) If this Section is held invalid as applied to the period of pregnancy prior to viability, then it shall remain applicable to the period of pregnancy subsequent to viability.

(b) Prohibition on abortion for Down syndrome.

(1) No person may intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion because the unborn child has been diagnosed with either Down syndrome or a potential for Down syndrome.

(2) If this Section is held invalid as applied to the period of pregnancy prior to viability, then it shall remain applicable to the period of pregnancy subsequent to viability.

(c) Prohibition on abortion for a genetic abnormality.

(1) No person may intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion solely because the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.

(2) If this Section is held invalid as applied to the period of pregnancy prior to viability, then it shall remain applicable to the period of pregnancy subsequent to viability.

Section 7. Criminal Penalties.

(a) Regarding abortion performed after 20 weeks' gestation:

(1) Any person who intentionally or knowingly violates this Ordinance is guilty of a second-degree misdemeanor.

(2) Any physician who intentionally or knowingly performs or induces an abortion in violation of this Ordinance and thereby kills an unborn child shall be fined not less than five hundred dollars ($500.00) under this Ordinance, or be imprisoned not less than six (6) months, or both.

(b) Regarding abortion-inducing drugs:
Any person who intentionally, knowingly, or recklessly violates any provision of this Ordinance is guilty of a second-degree misdemeanor.

(c) Regarding prenatal discrimination:

Any physician or other person who intentionally or knowingly performs or attempts to perform an abortion prohibited by this Ordinance shall be guilty of a second degree misdemeanor, and shall be fined not less than five hundred dollars ($500.00) or be imprisoned not less than six (6) months or both.

(d) The State Attorney for Indian River County shall have authority to investigate and prosecute violations of this Ordinance in coordination with the Indian River County Sheriff's Office. The Board of County Commissioners shall have authority to budget the sum of ten thousand dollars ($10,000.00) to the Office of the State Attorney for the investigation and prosecution of alleged violations of this Ordinance, provided, however, that said sum shall not be expended unless and until the State Attorney or the Sheriff's Office informs the Board that a credible allegation of violation has occurred.

Section 8. Civil Remedies and Professional Sanctions.

(a) Regarding abortions performed after 20 weeks gestational age:

(1) The woman, the father of the unborn child if married to the mother at the time she receives an abortion in violation of this Ordinance, and/or, if the mother has not attained the age of eighteen (18) years at the time of the abortion, the maternal grandparents of the unborn child may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or, if brought by the maternal grandparents, the maternal grandparents consented to the abortion.

(2) Such relief shall include

(i) Money damages for all psychological and physical injuries occasioned by the violation of this Ordinance; and

(ii) Statutory damages equal to three times the cost of the abortion performed in violation of this Ordinance.

(b) Regarding abortion-inducing drugs:

(1) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was attempted, induced, or performed.

(2) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(3) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(c) Regarding prenatal discrimination:

(1) Any physician or person who intentionally or knowingly violates this Ordinance shall be liable for damages as set forth in subsection (2) below. He or she may also be enjoined from future acts prohibited by subsections 6(a) through 6(c) of this Ordinance, pursuant to subsection (3) below.

(2) A pregnant woman upon whom an abortion has been performed in violation of this Ordinance, the parent or legal guardian of the woman if she is an unemancipated minor, or the legal guardian or conservator of the woman if she has been adjudged incompetent may commence a civil action for any knowing, intentional, or reckless violation of the Ordinance and may seek both actual and punitive damages. Such damages shall include, but are not limited to:

(i) Money damages for all psychological and physical injuries occasioned by the violation(s) of this Ordinance; and

(ii) Statutory damages equal to three times the cost of the abortion performed in violation of this Ordinance.

(3) A cause of action for injunctive relief against any physician or other person who has knowingly violated this Ordinance may be maintained by the woman upon whom the abortion was performed or attempted to be performed in violation of this Ordinance; any person who is the spouse, parent, guardian, conservator, or a current or former licensed healthcare provider of the woman upon whom an abortion has been performed or attempted to be performed in violation of this Ordinance; or by a District Attorney with appropriate jurisdiction. The injunction shall prevent the physician or person from performing further abortions in violation of this Ordinance.

Section 9. Exclusion of Liability

For a Woman Who Undergoes Abortion Prohibited Under this Ordinance.

(1) Any woman upon whom an abortion in violation of this Ordinance is performed or attempted may not be prosecuted under this Ordinance for a conspiracy to violate this Ordinance or otherwise held criminally or civilly liable for any violation.

(2) In any criminal proceeding or action brought under this Ordinance, any woman upon whom an abortion in violation of this Ordinance is performed or attempted is entitled to all rights, protections, and notifications afforded to crime victims under the law of the State of Florida and Indian River County.

(3) In every civil proceeding or action brought under this Ordinance, the anonymity of the woman upon whom an abortion is performed or attempted shall be preserved from public disclosure unless she gives her consent to such disclosure. A court of competent jurisdiction, upon motion or *sua sponte*, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who initiates a proceeding or action under Section 8(b) or Section 8(d) of this Ordinance shall do so under a pseudonym.

Section 10. Construction.

(a) Nothing in this Ordinance shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this Ordinance to make lawful an abortion that is currently unlawful.

(c) Nothing in this Ordinance shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species *homo sapiens* at any point prior to being born alive (as defined in this Ordinance).

(d) Nothing in this Ordinance shall be construed to affect existing federal, State or County law regarding abortion.

(e) Nothing in this Ordinance shall be construed to alter generally accepted medical standards.

Section 11. Right of Intervention.

The County Commission of Indian River County, Florida may appoint one or more of its members, who sponsored or cosponsored this Ordinance in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this Ordinance or any portion thereof is challenged.

Section 12. Severability.

Any provision of this Ordinance held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the

application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 13. Effective Date.

This Ordinance takes effect immediately on the date of its approval by the Board of County Commissioners.