

STATE OF NEW YORK

2761

2009-2010 Regular Sessions

IN ASSEMBLY

January 21, 2009

Introduced by M. of A. SWEENEY, COOK, FIELDS -- Multi-Sponsored by -- M.
of A. WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to advanced written consent and directives for the transfer, use, and disposition of gametes or embryos cryopreserved in the course of a program of assisted reproductive technology

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The domestic relations law is amended by adding a new article 8-A to read as follows:

ARTICLE 8-A

CRYOPRESERVED EMBRYOS OR GAMETES

5 SECTION 130. DEFINITIONS.

6 131. ADVANCE WRITTEN CONSENT AND DIRECTIVES FOR THE TRANSFER,
7 USE, AND DISPOSITION OF CRYOPRESERVED EMBRYOS OR
8 GAMETES.

9 S 130. DEFINITIONS. WHEN USED IN THIS ARTICLE, UNLESS THE CONTEXT OR
10 SUBJECT MATTER CLEARLY REQUIRES A DIFFERENT MEANING:

11 1. "ABANDON BY REQUEST" SHALL MEAN THAT A PARTY INTENDS TO CEASE
12 PARTICIPATION IN AN ASSISTED REPRODUCTIVE TECHNOLOGY PROGRAM AND NOTI-
13 FIES A PROVIDER OF ASSISTED REPRODUCTIVE SERVICES OF SUCH INTENT IN A
14 WRITTEN, SIGNED, AND NOTARIZED LETTER OF INTENT TO ABANDON BY REQUEST.
15 WITHIN THIRTY DAYS OF RECEIPT OF A PARTY'S LETTER OF INTENT TO ABANDON
16 BY REQUEST, THE PROVIDER SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT
17 REQUESTED, TO ANY OTHER PARTY WHOSE PARTICIPATION IN SUCH PROVIDER'S
18 ASSISTED REPRODUCTIVE SERVICES MAY BE AFFECTED BY THE REQUESTING PARTY'S
19 ABANDONMENT BY REQUEST, A WRITTEN NOTICE THAT THE TERMS OF AN EXECUTED
20 ADVANCE DIRECTIVE FOR DISPOSITION WILL BE IMPLEMENTED. IF ANY PARTY IS
21 ALSO A PATIENT, A COPY OF SUCH NOTICE AND PROOF OF MAILING SHALL BE KEPT

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 IN THAT PARTY'S MEDICAL RECORDS. ON THE THIRTIETH DAY AFTER THE DATE ON
2 THE LETTER OF NOTIFICATION, OR, IF THERE ARE NO OTHER AFFECTED PARTIES,
3 ON THE THIRTIETH DAY AFTER THE PROVIDER'S RECEIPT OF THE LETTER OF
4 INTENT TO ABANDON BY REQUEST, THE PROVIDER SHALL IMPLEMENT THE APPLICA-
5 BLE TERMS OF THE REQUESTING PARTY'S EXECUTED ADVANCE DIRECTIVE FOR
6 DISPOSITION.

7 2. "ASSISTED REPRODUCTIVE TECHNOLOGY" SHALL INCLUDE, BUT NOT BE LIMIT-
8 ED TO, THE FOLLOWING METHODS OF ASSISTING IN FERTILIZATION: IN VITRO
9 FERTILIZATION-EMBRYO TRANSFER, GAMETE INTRAFALLOPIAN TRANSFER, AND CRYO-
10 PRESERVATION.

11 3. "CRYOPRESERVATION" SHALL MEAN THE STORAGE OF GAMETES OR EMBRYOS
12 PRODUCED BY MEANS OF AN ASSISTED REPRODUCTIVE TECHNOLOGY PROCEDURE AND
13 PRESERVED BY MEANS OF LOW-TEMPERATURE FREEZING IN LIQUID NITROGEN OR
14 OTHER SIMILAR MEDIUM.

15 4. "EMBRYO" SHALL MEAN A FERTILIZED HUMAN OVUM.

16 5. "FAILURE TO PAY STORAGE FEES" SHALL MEAN THAT A PROVIDER TO WHOM A
17 PARTY PAYS A STORAGE FEE HAS NOT RECEIVED A FEE FROM SUCH PARTY FOR
18 THREE CONSECUTIVE YEARS. AFTER THREE CONSECUTIVE YEARS OF NONPAYMENT,
19 THE PROVIDER SHALL NOTIFY IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT
20 REQUESTED, SENT TO THE LAST KNOWN ADDRESS OF THE NON-PAYING PARTY, AND TO
21 THE LAST KNOWN ADDRESS OF ANY OTHER PARTY WHOSE PARTICIPATION MAY BE
22 AFFECTED BY THE NON-PAYING PARTY'S FAILURE TO PAY STORAGE FEES, A WRIT-
23 TEN NOTICE THAT, UNLESS THE PROVIDER IS CONTACTED AND INSTRUCTED TO DO
24 OTHERWISE, THE TERMS OF AN EXECUTED ADVANCED DIRECTIVE FOR DISPOSITION
25 IN THE EVENT OF FAILURE TO PAY STORAGE FEES WILL BE IMPLEMENTED. SIX
26 MONTHS FROM THE DATE OF THE FIRST NOTICE, A SECOND SUCH NOTICE SHALL BE
27 MAILED IN THE SAME MANNER AS THE FIRST NOTICE. IF THE NON-PAYING PARTY
28 OR AN AFFECTED PARTY IS ALSO A PATIENT, A COPY OF SUCH NOTICE OR NOTICES
29 AND PROOFS OF MAILING SHALL BE KEPT IN THAT PARTY'S MEDICAL RECORDS. IF
30 THE PROVIDER RECEIVES NO INSTRUCTION TO DO OTHERWISE IN RESPONSE TO
31 EITHER THE FIRST OR SECOND NOTIFICATION, ON THE THIRTIETH DAY AFTER THE
32 DATE OF THE SECOND LETTER OF NOTIFICATION, THE PROVIDER SHALL IMPLEMENT
33 THE TERMS OF THE NON-PAYING PARTY'S EXECUTED ADVANCE DIRECTIVE FOR
34 DISPOSITION IN THE EVENT OF FAILURE TO PAY STORAGE FEES.

35 6. "GAMETES" SHALL MEAN HUMAN SPERM OR OVA.

36 7. "PATIENT" SHALL MEAN A PERSON WHO DONATES OR RECEIVES A GAMETE OR
37 EMBRYO.

38 8. "PARTY" SHALL MEAN A NATURAL PERSON WHO EXECUTES, ACCORDING TO THE
39 PROVISIONS OF SECTION ONE HUNDRED THIRTY-ONE OF THIS ARTICLE, A PROVID-
40 ER'S ADVANCE WRITTEN CONSENT AND DIRECTIVES FOR THE TRANSFER, USE, AND
41 DISPOSITION OF CRYOPRESERVED EMBRYOS OR GAMETES FOR ASSISTED REPRODUC-
42 TIVE SERVICES.

43 9. "PROVIDER" SHALL MEAN AN INDIVIDUAL, CORPORATION, OTHER BUSINESS
44 ENTITY, OR NON-PROFIT ENTITY ENGAGED IN PROVIDING ASSISTED REPRODUCTIVE
45 TECHNOLOGY SERVICES.

46 S 131. ADVANCE WRITTEN CONSENT AND DIRECTIVES FOR THE TRANSFER, USE,
47 AND DISPOSITION OF CRYOPRESERVED EMBRYOS OR GAMETES. 1. ANY PROVIDER
48 LOCATED IN NEW YORK STATE WHOSE SERVICES INCLUDE THE CRYOPRESERVATION OF
49 GAMETES OR EMBRYOS, AND BEFORE PROVIDING ANY SUCH SERVICES, SHALL
50 REQUIRE THE PRIOR EXECUTION, PURSUANT TO THIS SECTION, OF ADVANCE WRIT-
51 TEN CONSENT AND DIRECTIVES AS TO THE TRANSFER, USE, AND DISPOSITION OF
52 SUCH GAMETES OR EMBRYOS. PRIOR TO RECEIVING ANY ASSISTED REPRODUCTIVE
53 TECHNOLOGY SERVICE, ON A FORM OR FORMS PRESCRIBED BY THE COMMISSIONER OF
54 HEALTH, SUCH CONSENT AND DIRECTIVES SHALL BE SIGNED AND DATED, IN THE
55 PRESENCE OF EACH OTHER, BY THE PARTY REQUESTING SERVICES, A WITNESS FOR
56 THE REQUESTING PARTY, AND A LICENSED PHYSICIAN AUTHORIZED BY THE PROVID-

1 ER. NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE OBLIGATION OF A
2 PHYSICIAN OR SURGEON UNDER CURRENT LAW TO OBTAIN THE INFORMED CONSENT OF
3 A PARTY WHO MAY ALSO BE A PATIENT PRIOR TO SUCH PHYSICIAN'S OR SURGEON'S
4 PERFORMING ANY MEDICAL OR SURGICAL PROCEDURE FOR WHICH INFORMED CONSENT
5 IS OTHERWISE REQUIRED.

6 2. (A) THE FORM FOR ADVANCE WRITTEN CONSENT TO ASSISTED REPRODUCTIVE
7 SERVICES EXECUTED BY A PARTY WHO IS ALSO A PATIENT SHALL INCLUDE, BUT
8 NOT BE LIMITED TO, THE FOLLOWING INFORMATION: (I) THE PATIENT'S NAME;
9 (II) THE PATIENT'S ADDRESS, TELEPHONE NUMBER, OR OTHER RELEVANT CONTACT
10 INFORMATION; (III) THE TYPE AND QUANTITY, IF APPLICABLE, OF SPERM, OVA,
11 OR EMBRYOS DONATED OR RECEIVED; AND (IV) THE NAME OF THE CLINIC, OR
12 OTHER DONEE FOR A SPECIFIED PURPOSE, WHICH PURPOSE SHALL BE CLEARLY
13 STATED.

14 (B) THE FORM FOR ADVANCE WRITTEN CONSENT TO ASSISTED REPRODUCTIVE
15 SERVICES EXECUTED BY A PARTY WHO IS ALSO A PATIENT SHALL BE SIGNED AND
16 DATED BY THE PATIENT, THE ATTENDING PHYSICIAN OR SURGEON, A PROVIDER-AU-
17 THORIZED CLINICIAN WHO SHALL VERIFY THE TYPE AND QUANTITY, IF APPLICA-
18 BLE, OF SPERM, OVA, OR EMBRYOS DONATED OR RECEIVED, AND ANY OTHER SIGNA-
19 TORIES REQUIRED BY SUBDIVISION ONE OF THIS SECTION. THE ORIGINAL
20 EXECUTED CONSENT FORM SHALL BE RETAINED IN THE PROVIDER'S BUSINESS
21 RECORDS, THE MEDICAL RECORDS OF THE PARTY WHO IS ALSO A PATIENT, AND A
22 COPY SHALL BE PROVIDED TO THE PARTY.

23 3. (A) THE FORM PRESCRIBING DIRECTIVES AS TO THE DISPOSITION OF
24 CRYOPRESERVED GAMETES OR EMBRYOS SHALL INCLUDE, BUT NOT BE LIMITED TO,
25 CHOICES FOR DISPOSITION UNDER THE FOLLOWING CIRCUMSTANCES: (I) DEATH OF
26 A PARTY; (II) THE PARTY'S SEPARATION OR DIVORCE; (III) THE PARTY'S DECI-
27 SION TO ABANDON BY REQUEST CRYOPRESERVED GAMETES OR EMBRYOS; OR (IV) THE
28 PARTY'S ABANDONMENT OF CRYOPRESERVED GAMETES OR EMBRYOS BY FAILURE TO
29 PAY STORAGE FEES.

30 (B) THE FORM PRESCRIBING DIRECTIVES AS TO THE DISPOSITION OF CRYOPRE-
31 SERVED GAMETES OR EMBRYOS SHALL INCLUDE, BUT NOT BE LIMITED TO, CHOICES
32 AND DIRECTION FOR THE FOLLOWING DISPOSITION OPTIONS: (I) MADE AVAILABLE,
33 TRANSFERRED, OR DONATED TO ANOTHER PARTY; (II) DONATED FOR RESEARCH
34 PURPOSES; (III) THAWED WITH NO FURTHER ACTION TAKEN; OR (IV) OTHER
35 DISPOSITION, PROVIDED THAT SUCH DISPOSITION SHALL BE CLEARLY STATED.

36 (C) THE FORM PRESCRIBING DIRECTIVES AS TO THE DISPOSITION OF CRYOPRE-
37 SERVED GAMETES OR EMBRYOS SHALL CLEARLY STATE THE PROVIDER'S TIME LIMIT
38 ON STORAGE OF SUCH GAMETES OR EMBRYOS; SUCH TIME LIMIT SHALL NOT BE LESS
39 THAN THREE YEARS.

40 (D) A PARTY WHO CHOOSES THE OPTION TO DONATE TO ANOTHER PARTY PURSUANT
41 TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF THIS SUBDIVISION SHALL MEET SUCH
42 DONOR QUALIFICATIONS AS MAY BE REQUIRED IN APPLICABLE LAW AND REGU-
43 LATIONS.

44 (E) A PARTY MAY MODIFY DIRECTIVES FOR DISPOSITION OF CRYOPRESERVED
45 GAMETES AND EMBRYOS AT A LATER DATE; PROVIDED THAT SUCH MODIFICATION
46 SHALL BE EXECUTED IN THE SAME MANNER AS IS REQUIRED FOR AN INITIAL
47 CONSENT AND DIRECTIVE PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

48 S 2. This act shall take effect on the two hundred eightieth day after
49 it shall have become a law; provided, however, that, effective imme-
50 diately, the commissioner of health is authorized to promulgate any and
51 all rules and regulations and take any other measures necessary to
52 implement this act on its effective date on or before such date.