STATE OF NEW YORK

7602

2021-2022 Regular Sessions

IN SENATE

December 15, 2021

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to establishing the "donor-conceived person protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "donor-conceived person protection act".

§ 2. Legislative findings and intent. The legislature acknowledges the importance of parents and donor-conceived persons knowing the medical, educational and criminal felony conviction history of individuals who have donated reproductive tissue to a reproductive tissue bank for purposes of an artificial insemination or assisted reproductive technology procedure and disseminating this history information to a recipient and donor-conceived person upon request, if any.

The legislature further acknowledges knowing the medical, educational and criminal felony conviction history of a donor will provide recipients with the necessary information to make informed decisions regarding the process of artificial insemination or assisted reproductive technology procedure and for donor-conceived persons to obtain essential medical information, which may reveal any genetic or mental health disorders.

The legislature finds that reproductive tissue banks, including semen banks, oocyte donation programs and embryo banks have a duty to collect and verify medical, educational and criminal felony conviction history information provided by donors on donor self-reported medical, educational and criminal felony conviction histories and during the donor screening processes and to keep detailed records of such for use by recipients and donor-conceived persons, if any, prior to a procedure and in the future.

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

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The legislature further finds that the protections currently afforded to reproductive tissue bank donors' medical and educational records be waived and that donors' identify all recent medical professionals, secondary and post-secondary schools attended, and criminal felony convictions on such donor self-reported histories and during the donor screening processes, in order to effectuate the provisions of this act.

§ 3. Section 4360 of the public health law is amended by adding five new subdivisions 1-a, 11, 12, 13 and 14 to read as follows:

1-a. "Reproductive tissue bank" means a facility, which acquires, processes, stores, distributes and/or releases reproductive tissue to an insemination/implantation site or recipient for use in artificial insemination or assisted reproductive technology procedures. Reproductive tissue banks include, but are not limited to, semen banks, oocyte donation programs and embryo banks.

11. "Donor" means a person who provides reproductive tissue for use in artificial insemination or assisted reproductive procedures performed on recipients other than that person or that person's regular sexual partner, and includes direct and known donors.

12. "Donor reproductive tissue" means any tissue from the reproductive tract intended for use in artificial insemination or any other assisted reproductive technology procedure. This includes, but is not limited to, semen, oocytes, embryos, spermatozoa, spermatids.

13. "Recipient" means a person who receives reproductive tissue from a donor.

14. "Donor-conceived person" means a person purposely conceived through an assisted reproductive technology procedure or artificial insemination via the donation of donor reproductive tissue.

§ 4. The public health law is amended by adding a new section 4370 to read as follows:

§ 4370. Donor-conceived person protection act. 1. Notwithstanding any other provision of law to the contrary, the commissioner shall ensure that reproductive tissue banks, licensed by the department, before selling or otherwise providing a recipient with donor reproductive tissue, collect and verify medical, educational and criminal felony conviction history information from any donor it procures reproductive tissue from and to disseminate such information to a recipient before a recipient purchases or otherwise receives such tissue, and to donor-conceived persons conceived with such tissue, if any, when such persons turn eighteen years of age or earlier upon consent of the recipient parent or guardian, consistent with this section.

2. A reproductive tissue bank donor shall:

(a) Provide the reproductive tissue bank information on all diagnosed medical conditions, including but not limited to, any genetic disorders, infectious diseases, mental disabilities and/or serious mental illnesses as such are defined within section 1.03 of the mental hygiene law;

(b) Provide the reproductive tissue bank information on all serious familial medical conditions, to the extent such donor has knowledge of or should have knowledge of such conditions, within the third degree of consanguinity, including but not limited to, any genetic disorders, infectious diseases, mental disabilities and/or serious mental illnesses as such are defined within section 1.03 of the mental hygiene law;

(c) Provide the names of any medical professionals seen by such donor, within the preceding five years from the date of donation, any secondary, post-secondary, and graduate schools attended, and any criminal felony convictions to the reproductive tissue bank;

(d) Provide the reproductive tissue bank written consent authorizing the reproductive tissue bank to obtain all medical records held by such medical professionals seen by the donor in the preceding five years, all enrollment and graduation records held by secondary and post-secondary schools attended by the donor, and all criminal felony conviction records; and

(e) Provide written consent authorizing the release of medical, educational, and criminal felony conviction history information by the reproductive tissue bank, to include a waiver of the protection of medical history information pursuant to the Health Insurance Portability and Accountability Act of 1996 and the protection of educational history information pursuant to the Family Educational Rights and Privacy Act and their implementing regulations, to potential recipients and their physicians, as well as to donor-conceived persons conceived with the donor's reproductive tissue, if any, when such persons turn eighteen years of age or earlier upon consent of the recipient parent or guardian.

3. A reproductive tissue bank procuring donor reproductive tissue shall:

(a) Provide a statement, signed by the donor, informing him or her of their obligations contained within the provisions of subdivision two of this section;

(b) Verify medical, educational and criminal felony conviction information provided by the donor as required pursuant to subdivision two of this section against the donor's medical, educational and criminal felony conviction records, if any, including obtaining a statewide criminal history record search from the New York state office of court administration;

(c) Disclose to recipients before selling or otherwise providing them with donor reproductive tissue, and if applicable, donor-conceived persons conceived with the donor's reproductive tissue upon request, when such persons turn eighteen years of age or earlier upon consent of the recipient parent or guardian, all medical, educational and criminal felony conviction records of such donor, as well as any other information required to be provided by the donor, including the timeframes and type of medical professionals contained within the donor's medical records, except that if the reproductive tissue bank is unable to obtain such information from the donor's medical records, it shall note the type of medical professional and state the reason why such records were unable to be obtained;

(d) Produce a standard form, prescribed by the commissioner, identifying by reporting status, all medical, educational and criminal felony conviction information required to be provided by the donor under this section, utilizing verifiable information contained in the donor's medical, educational and criminal felony conviction records, and any unverifiable medical, educational and criminal felony conviction information provided by the donor to the reproductive tissue bank. Such form shall be made available at no charge to both the recipient and their physician, as well as any donor-conceived persons conceived with the donor's reproductive tissue upon request, if any, when such persons turn eighteen years of age or earlier upon consent of the recipient parent or guardian;

(e) Except in the case of known donors, redact any personal identifying information contained in the donor's medical, educational and criminal felony conviction records released to a recipient, their physician and donor-conceived persons conceived with the donor's reproductive

tissue, if any. Such information shall include the donor's name, address, and any other information which would directly or indirectly identify the donor. Redacted records shall be made available at no charge to the recipient, their physician as well as any donor-conceived person conceived with the donor's reproductive tissue upon request, if any;

(f) No donor reproductive tissue procured by a reproductive tissue bank located outside the state of New York shall be used in any artificial insemination or any other assisted reproductive technology procedure set to take place within the state unless and until the reproductive tissue bank provides the recipient and/or the recipient's physician signed certification from the medical director of such reproductive tissue bank that it has complied with the medical, educational and criminal felony conviction verification requirements of this section; and

(g) No donor reproductive tissue procured by a reproductive tissue bank located within the state of New York shall be sold or otherwise shipped or transferred to a recipient, their physician or a reproductive tissue bank located in another state unless the reproductive tissue is accompanied by a signed certification from the medical director of the reproductive tissue bank from which the donor reproductive tissue was procured that the reproductive tissue bank complied with the medical, educational and criminal felony conviction verification requirements of this section.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.