

# STATE OF NEW YORK

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7602

2021-2022 Regular Sessions

## IN SENATE

December 15, 2021

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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:

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

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

10 The legislature further acknowledges knowing the medical, educational  
11 and criminal felony conviction history of a donor will provide recipi-  
12 ents with the necessary information to make informed decisions regarding  
13 the process of artificial insemination or assisted reproductive technol-  
14 ogy procedure and for donor-conceived persons to obtain essential  
15 medical information, which may reveal any genetic or mental health  
16 disorders.

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

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

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

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

9 1-a. "Reproductive tissue bank" means a facility, which acquires,  
10 processes, stores, distributes and/or releases reproductive tissue to an  
11 insemination/implantation site or recipient for use in artificial inse-  
12 mination or assisted reproductive technology procedures. Reproductive  
13 tissue banks include, but are not limited to, semen banks, oocyte  
14 donation programs and embryo banks.

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

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

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

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

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

30 § 4370. Donor-conceived person protection act. 1. Notwithstanding any  
31 other provision of law to the contrary, the commissioner shall ensure  
32 that reproductive tissue banks, licensed by the department, before sell-  
33 ing or otherwise providing a recipient with donor reproductive tissue,  
34 collect and verify medical, educational and criminal felony conviction  
35 history information from any donor it procures reproductive tissue from  
36 and to disseminate such information to a recipient before a recipient  
37 purchases or otherwise receives such tissue, and to donor-conceived  
38 persons conceived with such tissue, if any, when such persons turn eigh-  
39 teen years of age or earlier upon consent of the recipient parent or  
40 guardian, consistent with this section.

41 2. A reproductive tissue bank donor shall:

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

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

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

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

7 (e) Provide written consent authorizing the release of medical, educa-  
8 tional, and criminal felony conviction history information by the repro-  
9 ductive tissue bank, to include a waiver of the protection of medical  
10 history information pursuant to the Health Insurance Portability and  
11 Accountability Act of 1996 and the protection of educational history  
12 information pursuant to the Family Educational Rights and Privacy Act  
13 and their implementing regulations, to potential recipients and their  
14 physicians, as well as to donor-conceived persons conceived with the  
15 donor's reproductive tissue, if any, when such persons turn eighteen  
16 years of age or earlier upon consent of the recipient parent or guardi-  
17 an.

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

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

23 (b) Verify medical, educational and criminal felony conviction infor-  
24 mation provided by the donor as required pursuant to subdivision two of  
25 this section against the donor's medical, educational and criminal felo-  
26 ny conviction records, if any, including obtaining a statewide criminal  
27 history record search from the New York state office of court adminis-  
28 tration;

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

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

53 (e) Except in the case of known donors, redact any personal identify-  
54 ing information contained in the donor's medical, educational and crimi-  
55 nal felony conviction records released to a recipient, their physician  
56 and donor-conceived persons conceived with the donor's reproductive

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

7 (f) No donor reproductive tissue procured by a reproductive tissue  
8 bank located outside the state of New York shall be used in any artifi-  
9 cial insemination or any other assisted reproductive technology proce-  
10 dure set to take place within the state unless and until the reproduc-  
11 tive tissue bank provides the recipient and/or the recipient's physician  
12 signed certification from the medical director of such reproductive  
13 tissue bank that it has complied with the medical, educational and crim-  
14 inal felony conviction verification requirements of this section; and

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

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