STATE OF NEW YORK

5942

2021-2022 Regular Sessions

IN SENATE

March 23, 2021

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

AN ACT to amend the civil rights law, in relation to establishing a cause of action for fertility fraud

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

Section 1. The civil rights law is amended by adding a new section 52-d to read as follows:

§ 52-d. Private right of action for fertility fraud. 1. Any patient who has undergone an assisted reproduction procedure with a health care provider or the spouse of any patient who has undergone an assisted reproduction procedure with a health care provider shall have a private right of action for damages against such health care provider under any of the following conditions:

(a) such health care provider knowingly or intentionally performs an assisted reproduction procedure using the human reproductive material of the health care provider or any other donor without the patient's informed written consent to treatment using human reproductive material from the health care provider or from any donor other than a donor from whom the patient consented to in writing; or

(b) such health care provider intentionally performs an assisted reproduction procedure and such health care provider knows or reasonably should have known that the human reproductive material was used: (i) without the donor's consent; or (ii) in a manner or to an extent other than that to which the donor consented.

2. Damages recovered by a plaintiff pursuant to this section shall include compensatory damages. In addition thereto, the trier of fact may award punitive damages and such other non-monetary relief as may be appropriate. In awarding damages, the court may consider the emotional impact of the defendant's conduct.

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

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3. Nothing in this section shall be deemed to abrogate or otherwise limit any right or remedy otherwise conferred by federal or state law including but not limited to, any right or remedy related to child support, nor shall any award under this section be used to offset child support obligations that may arise in connection with this section.

4. For purposes of this section, the following terms shall have the following meanings:

(a) "human reproductive material" shall mean:

(i) a human spermatozoon or ovum; or

(ii) a human organism at any stage of development from fertilized ovum to embryo; and

(b) "patient" shall mean any individual injected or implanted with human reproductive material.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law, and shall apply to acts occurring on or after such date.