

STATE OF NEW YORK

9073

IN SENATE

May 6, 2022

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

AN ACT to amend the civil rights law and the education 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, the spouse of any patient who has undergone an assisted reproduction procedure with a health care provider, or a child or person born as a result of such assisted reproduction procedure 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. Any patient who has undergone an assisted reproduction procedure, the spouse of any patient who has undergone an assisted reproduction procedure, or a child or person born as a result of such assisted reproduction procedure shall have a private right of action for damages against a donor or assisted reproductive service provider under any of the following conditions:

(a) such donor or assisted reproductive service provider knowingly provides false or misleading information about the donor's medical

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

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1 history including but not limited to an illness at the time of donation,
2 any past illness of the donor, or the genetic or family history of the
3 donor for the past two generations which is known to the donor at the
4 time of donation; or

5 (b) such assisted reproductive service provider knowingly uses or
6 provides human reproductive material for an assisted reproduction proce-
7 dure in a manner or to an extent other than that to which the patient
8 consented.

9 3. A donor of human reproductive material shall have a cause of action
10 against a health care provider or assisted reproductive service provid-
11 er, if the donor's human reproductive material was used: (a) without the
12 donor's consent; or (b) in a manner or to an extent other than that to
13 which the donor consented.

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

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

24 6. A cause of action under this section shall be commenced no later
25 than six years from the date a person discovers, or reasonably should
26 have discovered, the fertility fraud.

27 7. For purposes of this section, the following terms shall have the
28 following meanings:

29 (a) "donor" shall mean an individual who does not intend to be a
30 parent, who produces human reproductive material and provides such human
31 reproductive material to another person, other than the individual's
32 spouse, for use in an assisted reproduction procedure;

33 (b) "human reproductive material" shall mean:

34 (i) a human spermatozoon or ovum; or

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

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

39 § 2. Section 6530 of the education law is amended by adding a new
40 subdivision 51 to read as follows:

41 51. Found liable for fertility fraud under section fifty-two-d of the
42 civil rights law.

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