STATE OF NEW YORK

2845

2023-2024 Regular Sessions

IN ASSEMBLY

January 27, 2023

Introduced by M. of A. PAULIN, DINOWITZ, FAHY, L. ROSENTHAL, ZEBROWSKI, SEAWRIGHT, MAGNARELLI, SIMON, ROZIC, OTIS, McDONOUGH -- read once and referred to the Committee on Judiciary

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. Article 5 of the civil rights law is amended by adding a new section 52-e to read as follows:

§ 52-e. Private right of action for fertility fraud. 1. Any patient who has undergone an assisted reproduction procedure with a health care provider, any intended parent, the spouse of any patient who has undergone an assisted reproduction procedure with a health care provider, the spouse of any intended parent, 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, any intended parent, the spouse of any patient who has undergone an assisted reproduction procedure, the spouse of any intended parent, or a

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

LBD07114-01-3

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

(b) such assisted reproductive service provider knowingly uses or provides human reproductive material for an assisted reproduction procedure in a manner or to an extent other than that to which the patient consented.

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

4. 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.

5. 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.

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

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

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

(b) "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;

(c) "patient" shall mean any individual injected or implanted with human reproductive material; and

(d) "intended parent" shall have the same meaning as in subdivision (l) of section 581-102 of the family court act.

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

51. (a) Knowingly or intentionally performing an assisted reproduction procedure using the human reproductive material of the licensee or any other donor without the patient's informed written consent to treatment using human reproductive material from the licensee or from any donor other than a donor from whom the patient consented to in writing; or

(b) intentionally performing an assisted reproduction procedure and such licensee 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.

§ 3. 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.