

# STATE OF NEW YORK

4269--A

2023-2024 Regular Sessions

## IN SENATE

February 7, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 assisted reproduction procedure, the spouse of any intended parent, or a  
2 child or person born as a result of such assisted reproduction procedure  
3 shall have a private right of action for damages against a donor or  
4 assisted reproductive service provider under any of the following condi-  
5 tions:

6 (a) such donor or assisted reproductive service provider knowingly  
7 provides false or misleading information about the donor's medical  
8 history including but not limited to an illness at the time of donation,  
9 any past illness of the donor, or the genetic or family history of the  
10 donor for the past two generations which is known to the donor at the  
11 time of donation; or

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

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

21 4. Damages recovered by a plaintiff pursuant to this section shall  
22 include compensatory damages, including plaintiff's emotional distress  
23 arising from defendant's conduct. In addition thereto, the trier of  
24 fact may award punitive damages and such other non-monetary relief as  
25 may be appropriate.

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

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

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

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

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

41 (i) a human spermatozoon or ovum; or

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

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

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

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

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

1 (b) intentionally performing an assisted reproduction procedure and  
2 such licensee knows or reasonably should have known that the human  
3 reproductive material was used:

4 (i) without the donor's consent; or

5 (ii) in a manner or to an extent other than that to which the donor  
6 consented.

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