A BILL FOR AN ACT

CONCERNING UNCONSENTED USE OF DONOR GAMETES IN FERTILITY TREATMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill creates a new civil cause of action and a crime if a health care provider in the course of assisted reproduction uses gamete from a person without the written consent of the patient. The bill authorizes specified compensatory damages or liquidated damages of $50,000 in the civil action and specifies that the crime is a class 6 felony. The bill includes that conviction of an offense under the new crime is
unprofessional conduct under the licensing to practice medicine.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 13-21-131 as follows:


(1) As used in this section, unless the context otherwise requires:

(a) "Assisted reproduction" means a method of causing pregnancy through means other than by sexual intercourse. "Assisted reproduction" includes, but is not limited to:

(I) Intrauterine or intracervical insemination;

(II) Donation of eggs or sperm;

(III) Donation of embryos;

(IV) In vitro fertilization and embryo transfer; and

(V) Intracytoplasmic sperm injection.

(b) "Donor" means an individual who expressly provides consent to provide donated eggs, sperm, or embryos for a patient for assisted reproduction.

(c) "Gametes" means one or more cells containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs are gametes. A gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

(d) "Health care provider" means any individual who is authorized to practice some component of the healing arts by
LICENSE, CERTIFICATE, OR REGISTRATION PURSUANT TO TITLE 12.

(2) Any of the following may bring an action against a health care provider who, in the course of performing or assisting an assisted reproduction procedure on a patient, knowingly uses gametes from a donor that the patient did not expressly consent to the use of that donor's gametes:

(a) A patient who gives birth to a child after being treated through assisted reproduction by the health care provider;

(b) A spouse or partner of a patient described in subsection (2)(a) of this section;

(c) A surviving spouse or partner of a patient described in subsection (2)(a) of this section; or

(d) A child born as a result of the actions of the health care provider.

(3) A plaintiff who prevails in an action pursuant to this section is entitled to reasonable attorney fees and either:

(a) All damages reasonably necessary to compensate the plaintiff for any injuries suffered as a result of the health care provider's actions, including but not limited to emotional or mental distress; or

(b) Liquidated damages of fifty thousand dollars.

(4) A person who brings an action pursuant to subsection (2) of this section has a separate cause of action for each child born as the result of the assisted reproduction procedure.

(5) Nothing in this section prohibits a person from pursuing any other remedy provided by law.

SECTION 2. In Colorado Revised Statutes, 13-80-102.5, amend
(3) introductory portion; and add (3)(e) as follows:

13-80-102.5. Limitation of actions - medical or health care.
(3) The limitation of actions provided in subsection (1) of this section shall not apply under the following circumstances:

(e) IF THE CLAIM ARISES AGAINST A HEALTH CARE PROVIDER PURSUANT TO SECTION 13-21-131.

SECTION 3. In Colorado Revised Statutes, add 18-13-131 as follows:

18-13-131. Misuse of gametes - definitions. (1) A HEALTH CARE PROVIDER COMMITS MISUSE OF GAMETES IF THE HEALTH CARE PROVIDER KNOWINGLY TREATS OR ASSISTS IN THE TREATMENT OF A PATIENT THROUGH ASSISTED REPRODUCTION BY USING GAMETES FROM A DONOR THAT THE PATIENT DID NOT EXPRESSLY CONSENT TO THE USE OF THAT DONOR’S GAMETES.

(2) MISUSE OF GAMETES IS A CLASS 6 FELONY.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ASSISTED REPRODUCTION" MEANS A METHOD OF CAUSING PREGNANCY THROUGH MEANS OTHER THAN BY SEXUAL INTERCOURSE. "ASSISTED REPRODUCTION" INCLUDES, BUT IS NOT LIMITED TO:

(I) INTRAUTERINE OR INTRACERVICAL INSEMINATION;

(II) DONATION OF EGGS OR SPERM;

(III) DONATION OF EMBRYOS;

(IV) IN VITRO FERTILIZATION AND EMBRYO TRANSFER; AND

(V) INTRACYTOPLASMIC SPERM INJECTION.

(b) "DONOR" MEANS AN INDIVIDUAL WHO EXPRESSLY PROVIDES CONSENT TO PROVIDE DONATED EGGS, SPERM, OR EMBRYOS FOR A PATIENT
FOR ASSISTED REPRODUCTION.

(c) "GAME" MEANS ONE OR MORE CELLS CONTAINING A HAPLOID COMPLEMENT OF DNA THAT HAS THE POTENTIAL TO FORM AN EMBRYO WHEN COMBINED WITH ANOTHER GAME. SPERM AND EGGS ARE GAMES. A GAME MAY CONSIST OF NUCLEAR DNA FROM ONE HUMAN BEING COMBINED WITH THE CYTOPLASM, INCLUDING CYTOPLASMIC DNA, OF ANOTHER HUMAN BEING.

(d) "HEALTH CARE PROVIDER" MEANS ANY INDIVIDUAL WHO IS AUTHORIZED TO PRACTICE SOME COMPONENT OF THE HEALING ARTS BY LICENSE, CERTIFICATE, OR REGISTRATION PURSUANT TO TITLE 12.

SECTION 4. In Colorado Revised Statutes, 12-240-121, add (1)(gg) as follows:

12-240-121. Unprofessional conduct - definitions. (1)
"Unprofessional conduct" as used in this article 240 means:

(gg) ANY CONVICTION OF AN OFFENSE UNDER SECTION 18-13-131. FOR PURPOSES OF THIS SUBSECTION (1)(gg), "CONVICTION" INCLUDES THE ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE OR THE IMPOSITION OF A DEFERRED SENTENCE.

SECTION 5. In Colorado Revised Statutes, 16-5-401, amend (4.5)(w) and (4.5)(x); and add (4.5)(y) as follows:

16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings. (4.5) The period within which a prosecution must be commenced begins to run upon discovery of the criminal act or the delinquent act for:

(w) Criminal offenses relating to securities fraud, pursuant to part 5 of article 51 of title 11; and

(x) Insurance fraud, pursuant to section 18-5-211; AND
CRIMINAL OFFENSES RELATING TO MISUSE OF GAMETES,

Pursuant to Section 18-13-131.

SECTION 6. Potential appropriation. Pursuant to section 2-2-703, C.R.S., any bill that results in a net increase in periods of imprisonment in state correctional facilities must include an appropriation of money that is sufficient to cover any increased capital construction, any operational costs, and increased parole costs that are the result of the bill for the department of corrections in each of the first five years following the effective date of the bill. Because this act may increase periods of imprisonment, this act may require a five-year appropriation.

SECTION 7. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to causes of action arising or offenses committed on or after the applicable effective date of this act.