

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0197.02 Jerry Barry x4341

HOUSE BILL 20-1014

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HOUSE SPONSORSHIP

Tipper and Rich,

SENATE SPONSORSHIP

Gardner,

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING UNCONSENTED USE OF DONOR GAMETE IN FERTILITY  
102 TREATMENT.

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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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

unprofessional conduct under the licensing to practice medicine.

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

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

4 **13-21-131. Civil liability for misuse of gamete - definitions.**

5 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
6 REQUIRES:

7 (a) "ASSISTED REPRODUCTION" MEANS A METHOD OF CAUSING  
8 PREGNANCY THROUGH MEANS OTHER THAN BY SEXUAL INTERCOURSE.

9 "ASSISTED REPRODUCTION" INCLUDES, BUT IS NOT LIMITED TO:

10 (I) INTRAUTERINE OR INTRACERVICAL INSEMINATION;

11 (II) DONATION OF EGGS OR SPERM;

12 (III) DONATION OF EMBRYOS;

13 (IV) IN VITRO FERTILIZATION AND EMBRYO TRANSFER; AND

14 (V) INTRACYTOPLASMIC SPERM INJECTION.

15 (b) "GAMETE" MEANS A CELL CONTAINING A HAPLOID  
16 COMPLEMENT OF DNA THAT HAS THE POTENTIAL TO FORM AN EMBRYO  
17 WHEN COMBINED WITH ANOTHER GAMETE. SPERM AND EGGS ARE  
18 GAMETES. A GAMETE MAY CONSIST OF NUCLEAR DNA FROM ONE HUMAN  
19 BEING COMBINED WITH THE CYTOPLASM, INCLUDING CYTOPLASMIC DNA,  
20 OF ANOTHER HUMAN BEING.

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

24 (2) ANY OF THE FOLLOWING MAY BRING AN ACTION AGAINST A  
25 HEALTH CARE PROVIDER WHO, IN THE COURSE OF PERFORMING OR

1 ASSISTING AN ASSISTED REPRODUCTION PROCEDURE ON A PATIENT,  
2 KNOWINGLY USES GAMETE FROM A DONOR THAT THE PATIENT DID NOT  
3 EXPRESSLY CONSENT TO THE USE OF THAT DONOR'S GAMETE:

4 (a) A PATIENT WHO GIVES BIRTH TO A CHILD AFTER BEING TREATED  
5 THROUGH ASSISTED REPRODUCTION BY THE HEALTH CARE PROVIDER;

6 (b) A SPOUSE OF A PATIENT DESCRIBED IN SUBSECTION (2)(a) OF  
7 THIS SECTION;

8 (c) A SURVIVING SPOUSE OF A PATIENT DESCRIBED IN SUBSECTION  
9 (2)(a) OF THIS SECTION; OR

10 (d) A CHILD BORN AS A RESULT OF THE ACTIONS OF THE HEALTH  
11 CARE PROVIDER.

12 (3) A PLAINTIFF WHO PREVAILS IN AN ACTION PURSUANT TO THIS  
13 SECTION IS ENTITLED TO REASONABLE ATTORNEY FEES AND EITHER:

14 (a) ALL DAMAGES REASONABLY NECESSARY TO COMPENSATE THE  
15 PLAINTIFF FOR ANY INJURIES SUFFERED AS A RESULT OF THE HEALTH CARE  
16 PROVIDER'S ACTIONS, INCLUDING BUT NOT LIMITED TO EMOTIONAL OR  
17 MENTAL DISTRESS; OR

18 (b) LIQUIDATED DAMAGES OF FIFTY THOUSAND DOLLARS.

19 (4) A PERSON WHO BRINGS AN ACTION PURSUANT TO SUBSECTION  
20 (2) OF THIS SECTION HAS A SEPARATE CAUSE OF ACTION FOR EACH CHILD  
21 BORN AS THE RESULT OF THE ASSISTED REPRODUCTION PROCEDURE.

22 (5) NOTHING IN THIS SECTION PROHIBITS A PERSON FROM  
23 PURSUING ANY OTHER REMEDY PROVIDED BY LAW.

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

26 **13-80-102.5. Limitation of actions - medical or health care.**

27 (3) The limitation of actions provided in subsection (1) of this section

1 ~~shall~~ DOES not apply under the following circumstances:

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

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

6 **18-13-131. Misuse of gamete - definitions.** (1) A HEALTH CARE  
7 PROVIDER COMMITS MISUSE OF GAMETE IF THE HEALTH CARE PROVIDER  
8 KNOWINGLY TREATS OR ASSISTS IN THE TREATMENT OF A PATIENT  
9 THROUGH ASSISTED REPRODUCTION BY USING THE HEALTH CARE  
10 PROVIDER'S OWN GAMETE WITHOUT THE PATIENT'S INFORMED WRITTEN  
11 CONSENT TO TREATMENT USING THE HEALTH CARE PROVIDER'S GAMETE.

12 (2) MISUSE OF GAMETE IS A CLASS 6 FELONY.

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

15 (a) "ASSISTED REPRODUCTION" MEANS A METHOD OF CAUSING  
16 PREGNANCY THROUGH MEANS OTHER THAN BY SEXUAL INTERCOURSE.

17 "ASSISTED REPRODUCTION" INCLUDES, BUT IS NOT LIMITED TO:

18 (I) INTRAUTERINE OR INTRACERVICAL INSEMINATION;

19 (II) DONATION OF EGGS OR SPERM;

20 (III) DONATION OF EMBRYOS;

21 (IV) IN VITRO FERTILIZATION AND EMBRYO TRANSFER; AND

22 (V) INTRACYTOPLASMIC SPERM INJECTION.

23 (b) "GAMETE" MEANS A CELL CONTAINING A HAPLOID  
24 COMPLEMENT OF DNA THAT HAS THE POTENTIAL TO FORM AN EMBRYO  
25 WHEN COMBINED WITH ANOTHER GAMETE. SPERM AND EGGS ARE  
26 GAMETES. A GAMETE MAY CONSIST OF NUCLEAR DNA FROM ONE HUMAN  
27 BEING COMBINED WITH THE CYTOPLASM, INCLUDING CYTOPLASMIC DNA,

1 OF ANOTHER HUMAN BEING.

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

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

7 **12-240-121. Unprofessional conduct - definitions.** (1)  
8 "Unprofessional conduct" as used in this article 240 means:

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

13 **SECTION 5. Potential appropriation.** Pursuant to section  
14 2-2-703, C.R.S., any bill that results in a net increase in periods of  
15 imprisonment in state correctional facilities must include an appropriation  
16 of money that is sufficient to cover any increased capital construction, any  
17 operational costs, and increased parole costs that are the result of the bill  
18 for the department of corrections in each of the first five years following  
19 the effective date of the bill. Because this act may increase periods of  
20 imprisonment, this act may require a five-year appropriation.

21 **SECTION 6. Act subject to petition - effective date -**  
22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
23 the expiration of the ninety-day period after final adjournment of the  
24 general assembly (August 5, 2020, if adjournment sine die is on May 6,  
25 2020); except that, if a referendum petition is filed pursuant to section 1  
26 (3) of article V of the state constitution against this act or an item, section,  
27 or part of this act within such period, then the act, item, section, or part

1 will not take effect unless approved by the people at the general election  
2 to be held in November 2020 and, in such case, will take effect on the  
3 date of the official declaration of the vote thereon by the governor.

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