

CHAPTER 238

COURTS

HOUSE BILL 20-1014

BY REPRESENTATIVE(S) Tipper and Rich, Bird, Buckner, Caraveo, Coleman, Duran, Esgar, Exum, Froelich, Garnett, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, Landgraf, Lontine, McCluskie, McLachlan, Melton, Michaelson Jenet, Mullica, Roberts, Saine, Sandridge, Singer, Sirota, Snyder, Soper, Sullivan, Titone, Valdez A., Weissman, Wilson, Young, Becker, Buentello, Neville, Valdez D., Van Winkle, Woodrow;
also SENATOR(S) Gardner, Bridges, Cooke, Crowder, Danielson, Fenberg, Fields, Ginal, Gonzales, Hansen, Holbert, Lee, Marble, Moreno, Pettersen, Priola, Rankin, Scott, Smallwood, Story, Tate, Todd, Garcia.

AN ACT**CONCERNING UNCONSENTED USE OF DONOR GAMETES IN FERTILITY TREATMENT.**

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

SECTION 1. In Colorado Revised Statutes, **add** 13-21-132 as follows:

13-21-132. Civil liability for misuse of gametes - definitions. (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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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~~ DOES not apply under the following circumstances:

(e) IF THE CLAIM ARISES AGAINST A HEALTH CARE PROVIDER PURSUANT TO SECTION 13-21-132.

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) "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.

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, 12-255-120, **amend** (1)(aa) and (1)(bb); and **add** (1)(hh) as follows:

12-255-120. Grounds for discipline. (1) "Grounds for discipline", as used in this article 255, means any action by any person who:

(aa) Fails to maintain professional liability insurance in accordance with section 12-255-113; ~~or~~

(bb) Has verified by signature the articulated plan developed by an advanced practice nurse pursuant to sections 12-240-108 and 12-255-112 (4) if the articulated plan fails to comply with the requirements of section 12-255-112 (4)(b)(II); OR

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

SECTION 6. In Colorado Revised Statutes, 16-5-401, **amend** (4.5)(w) and (4.5)(x); and **add** (4.5)(aa) 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

(aa) CRIMINAL OFFENSES RELATING TO MISUSE OF GAMETES, PURSUANT TO SECTION 18-13-131.

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.

Approved: July 6, 2020