

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-0197.02 Jerry Barry x4341

HOUSE BILL 20-1014

HOUSE SPONSORSHIP

Tipper and Rich,

SENATE SPONSORSHIP

Gardner,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING UNCONSENTED USE OF DONOR GAMETES IN FERTILITY**
102 **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

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.*

HOUSE
Amended 2nd Reading
January 31, 2020

unprofessional conduct under the licensing to practice medicine.

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

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

24 (d) "HEALTH CARE PROVIDER" MEANS ANY INDIVIDUAL WHO IS
25 AUTHORIZED TO PRACTICE SOME COMPONENT OF THE HEALING ARTS BY

1 LICENSE, CERTIFICATE, OR REGISTRATION PURSUANT TO TITLE 12.

2 (2) ANY OF THE FOLLOWING MAY BRING AN ACTION AGAINST A
3 HEALTH CARE PROVIDER WHO, IN THE COURSE OF PERFORMING OR
4 ASSISTING AN ASSISTED REPRODUCTION PROCEDURE ON A PATIENT,
5 KNOWINGLY USES GAMETES FROM A DONOR THAT THE PATIENT DID NOT
6 EXPRESSLY CONSENT TO THE USE OF THAT DONOR'S GAMETES:

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

9 (b) A SPOUSE OR PARTNER OF A PATIENT DESCRIBED IN
10 SUBSECTION (2)(a) OF THIS SECTION;

11 (c) A SURVIVING SPOUSE OR PARTNER OF A PATIENT DESCRIBED IN
12 SUBSECTION (2)(a) OF THIS SECTION; OR

13 (d) A CHILD BORN AS A RESULT OF THE ACTIONS OF THE HEALTH
14 CARE PROVIDER.

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

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

21 (b) LIQUIDATED DAMAGES OF FIFTY THOUSAND DOLLARS.

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

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

27 **SECTION 2.** In Colorado Revised Statutes, 13-80-102.5, **amend**

1 (3) introductory portion; and **add** (3)(e) as follows:

2 **13-80-102.5. Limitation of actions - medical or health care.**

3 (3) The limitation of actions provided in subsection (1) of this section
4 ~~shall~~ DOES not apply under the following circumstances:

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

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

9 **18-13-131. Misuse of gametes - definitions.** (1) A HEALTH CARE
10 PROVIDER COMMITS MISUSE OF GAMETES IF THE HEALTH CARE PROVIDER
11 KNOWINGLY TREATS OR ASSISTS IN THE TREATMENT OF A PATIENT
12 THROUGH ASSISTED REPRODUCTION BY USING GAMETES FROM A DONOR
13 THAT THE PATIENT DID NOT EXPRESSLY CONSENT TO THE USE OF THAT
14 DONOR'S GAMETES.

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

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

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

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

21 (I) INTRAUTERINE OR INTRACERVICAL INSEMINATION;

22 (II) DONATION OF EGGS OR SPERM;

23 (III) DONATION OF EMBRYOS;

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

25 (V) INTRACYTOPLASMIC SPERM INJECTION.

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

1 FOR ASSISTED REPRODUCTION.

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

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

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

13 **12-240-121. Unprofessional conduct - definitions.** (1)
14 "Unprofessional conduct" as used in this article 240 means:

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

19 **SECTION 5.** In Colorado Revised Statutes, 16-5-401, **amend**
20 (4.5)(w) and (4.5)(x); and **add** (4.5)(y) as follows:

21 **16-5-401. Limitation for commencing criminal proceedings**
22 **and juvenile delinquency proceedings.** (4.5) The period within which
23 a prosecution must be commenced begins to run upon discovery of the
24 criminal act or the delinquent act for:

25 (w) Criminal offenses relating to securities fraud, pursuant to part
26 5 of article 51 of title 11; and

27 (x) Insurance fraud, pursuant to section 18-5-211; AND

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

3 **SECTION 6. Potential appropriation.** Pursuant to section
4 2-2-703, C.R.S., any bill that results in a net increase in periods of
5 imprisonment in state correctional facilities must include an appropriation
6 of money that is sufficient to cover any increased capital construction, any
7 operational costs, and increased parole costs that are the result of the bill
8 for the department of corrections in each of the first five years following
9 the effective date of the bill. Because this act may increase periods of
10 imprisonment, this act may require a five-year appropriation.

11 **SECTION 7. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly (August 5, 2020, if adjournment sine die is on May 6,
15 2020); except that, if a referendum petition is filed pursuant to section 1
16 (3) of article V of the state constitution against this act or an item, section,
17 or part of this act within such period, then the act, item, section, or part
18 will not take effect unless approved by the people at the general election
19 to be held in November 2020 and, in such case, will take effect on the
20 date of the official declaration of the vote thereon by the governor.

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