



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB4199

Introduced 3/29/2022, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

New Act

720 ILCS 5/11-1.20

was 720 ILCS 5/12-13

735 ILCS 5/13-212

from Ch. 110, par. 13-212

735 ILCS 5/13-215.1 new

Creates the Illinois Fertility Fraud Act. Allows the following individuals to bring an action against any health care provider, embryologist, or any other person involved in any stage of the treatment who knowingly or intentionally used the health care provider's, embryologist's, or person's own human reproductive material, without the patient's informed written consent to treatment using the health care provider's or person's human reproductive material: a woman who gives birth to a child after receiving assisted reproductive treatment or any other artificial means used to cause pregnancy; the spouse of the woman; the surviving spouse of the woman; or a child born as a result of the treatment. Allows a donor of human reproductive material to bring an action against a health care provider who: treats a patient for infertility by using human reproductive material donated by the donor; and knows or reasonably should have known that the human reproductive material was used without the donor's consent or in a manner or to an extent other than that to which the donor consented. Provides that a plaintiff who prevails in an action under the Act is entitled to reasonable attorney's fees and compensatory and punitive damages or liquidated damages of \$50,000. Amends the Criminal Code of 2012. Provides that a person commits a criminal sexual assault if that person is a health care provider who knowingly or intentionally provides assisted reproductive treatment to a patient by using the health care provider's own spermatozoon or ovum, without the patient's informed written consent to treatment using the health care provider's spermatozoon or ovum. Amends the Code of Civil Procedure. Provides that an action for fertility fraud under the Illinois Fertility Fraud Act must be commenced within the later of 20 years after: the procedure was performed; the 18th birthday of the child; the person first discovers evidence sufficient to bring an action against the defendant through DNA analysis; the person first becomes aware of the existence of a record that provides evidence sufficient to bring an action against the defendant; or the defendant confesses to the offense.

LRB102 26952 LNS 38148 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Fertility Fraud Act.

6 Section 5. Legislative intent. The General Assembly finds
7 that fertility fraud, or the assisted reproductive treatment
8 of a patient using the health care provider's own human
9 reproductive material without the patient's informed written
10 consent, has caused significant harm and had a severe negative
11 impact on residents of this State including former patients
12 and their children. This conduct has never constituted or
13 complied with the medical standard of care and violates
14 doctor-patient trust. Often discovering the fraud through DNA
15 testing many years later, these individuals must now cope with
16 knowing that their bodies and autonomy were violated, grapple
17 with the sexual nature of the conduct, and negotiate identity
18 issues and changing family relationships. Therefore, it is the
19 intent of the General Assembly that any civil action
20 authorized by this Act shall be retroactive and apply to any
21 treatment by a health care provider occurring prior to the
22 effective date of this Act.

1 Section 10. Definitions. As used in this Act:

2 "Assisted reproductive treatment" means a method of
3 causing pregnancy by any means other than through sexual
4 intercourse, including:

- 5 (1) intrauterine or intracervical insemination;
6 (2) donation of eggs or sperm;
7 (3) donation of embryos;
8 (4) in vitro fertilization and embryo transfer; and
9 (5) intracytoplasmic sperm injection.

10 "Health care" means any phase of patient care, including,
11 but not limited to: testing; diagnosis; prognosis; ancillary
12 research; instructions; assisted reproduction; family
13 planning, counseling, referrals, or any other advice in
14 connection with conception; surgery or other care or treatment
15 rendered by a physician or physicians, nurses,
16 paraprofessionals or health care facility, intended for the
17 physical, emotional, and mental well-being of persons.

18 "Health care provider" means a physician, physician
19 assistant, advanced practice registered nurse, registered
20 nurse, licensed practical nurse, any individual licensed under
21 the laws of this State to provide health care, or any
22 individual who handles human reproductive material in a health
23 care setting.

24 "Human reproductive material" means:

- 25 (1) a human spermatozoon or ovum; or
26 (2) a human organism at any stage of development from

1 fertilized ovum to embryo.

2 "In vitro fertilization" means all medical and laboratory
3 procedures that are necessary to effectuate the extracorporeal
4 fertilization of egg and sperm.

5 "Physician" means a person licensed to practice medicine
6 in all its branches in this State.

7 Section 15. Fertility fraud. The following individuals may
8 bring an action against any health care provider,
9 embryologist, or any other person involved in any stage of the
10 treatment who knowingly or intentionally used the health care
11 provider's, embryologist's, or person's own human reproductive
12 material, without the patient's informed written consent to
13 treatment using the health care provider's or person's human
14 reproductive material:

15 (1) a woman who gives birth to a child after receiving
16 assisted reproductive treatment or any other artificial
17 means used to cause pregnancy;

18 (2) the spouse of a woman under paragraph (1);

19 (3) the surviving spouse of a woman under paragraph
20 (1); or

21 (4) a child born as a result of the treatment.

22 Section 20. Donor fertility fraud. A donor of human
23 reproductive material may bring an action against a health
24 care provider who:

1 (1) treats a patient for infertility by using human
2 reproductive material donated by the donor; and

3 (2) knows or reasonably should have known that the
4 human reproductive material was used:

5 (A) without the donor's consent; or

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

8 Section 25. Rewards. A plaintiff who prevails in an action
9 under this Act is entitled to reasonable attorney's fees and:

10 (1) compensatory and punitive damages; or

11 (2) liquidated damages of \$50,000.

12 A plaintiff who prevails in an action brought under
13 Section 15 is also entitled to the costs of the fertility
14 treatment.

15 Section 30. Causes of action.

16 (a) A person who brings an action under Section 15 has a
17 separate cause of action for each child born as the result of
18 the fraudulent assisted reproductive treatment.

19 (b) A person who brings an action under Section 20 has a
20 separate cause of action for each individual who received
21 assisted reproductive treatment with the donor's human
22 reproductive material.

23 Section 35. Other remedies. Nothing in this Act may be

1 construed to prohibit a person from pursuing any other remedy
2 provided by law.

3 Section 40. The Criminal Code of 2012 is amended by
4 changing Section 11-1.20 as follows:

5 (720 ILCS 5/11-1.20) (was 720 ILCS 5/12-13)

6 Sec. 11-1.20. Criminal sexual assault.

7 (a) A person commits criminal sexual assault if that
8 person commits an act of sexual penetration and:

9 (1) uses force or threat of force;

10 (2) knows that the victim is unable to understand the
11 nature of the act or is unable to give knowing consent;

12 (3) is a family member of the victim, and the victim is
13 under 18 years of age; or

14 (4) is 17 years of age or over and holds a position of
15 trust, authority, or supervision in relation to the
16 victim, and the victim is at least 13 years of age but
17 under 18 years of age.

18 (a-5) A person commits criminal sexual assault if that
19 person is a health care provider who knowingly or
20 intentionally provides assisted reproductive treatment to a
21 patient by using the health care provider's own spermatozoon
22 or ovum, without the patient's informed written consent to
23 treatment using the health care provider's spermatozoon or
24 ovum.

1 (b) Sentence.

2 (1) Criminal sexual assault is a Class 1 felony,
3 except that:

4 (A) A person who is convicted of the offense of
5 criminal sexual assault as defined in paragraph (a) (1)
6 or (a) (2) after having previously been convicted of
7 the offense of criminal sexual assault or the offense
8 of exploitation of a child, or who is convicted of the
9 offense of criminal sexual assault as defined in
10 paragraph (a) (1) or (a) (2) after having previously
11 been convicted under the laws of this State or any
12 other state of an offense that is substantially
13 equivalent to the offense of criminal sexual assault
14 or to the offense of exploitation of a child, commits a
15 Class X felony for which the person shall be sentenced
16 to a term of imprisonment of not less than 30 years and
17 not more than 60 years, except that if the person is
18 under the age of 18 years at the time of the offense,
19 he or she shall be sentenced under Section 5-4.5-105
20 of the Unified Code of Corrections. The commission of
21 the second or subsequent offense is required to have
22 been after the initial conviction for this paragraph
23 (A) to apply.

24 (B) A person who has attained the age of 18 years
25 at the time of the commission of the offense and who is
26 convicted of the offense of criminal sexual assault as

1 defined in paragraph (a)(1) or (a)(2) after having
2 previously been convicted of the offense of aggravated
3 criminal sexual assault or the offense of predatory
4 criminal sexual assault of a child, or who is
5 convicted of the offense of criminal sexual assault as
6 defined in paragraph (a)(1) or (a)(2) after having
7 previously been convicted under the laws of this State
8 or any other state of an offense that is substantially
9 equivalent to the offense of aggravated criminal
10 sexual assault or the offense of predatory criminal
11 sexual assault of a child shall be sentenced to a term
12 of natural life imprisonment. The commission of the
13 second or subsequent offense is required to have been
14 after the initial conviction for this paragraph (B) to
15 apply. An offender under the age of 18 years at the
16 time of the commission of the offense covered by this
17 subparagraph (B) shall be sentenced under Section
18 5-4.5-105 of the Unified Code of Corrections.

19 (C) A second or subsequent conviction for a
20 violation of paragraph (a)(3) or (a)(4) or subsection
21 (a-5) or under any similar statute of this State or any
22 other state for any offense involving criminal sexual
23 assault that is substantially equivalent to or more
24 serious than the sexual assault prohibited under
25 paragraph (a)(3) or (a)(4) or subsection (a-5) is a
26 Class X felony.

1 (Source: P.A. 99-69, eff. 1-1-16.)

2 Section 45. The Code of Civil Procedure is amended by
3 changing Section 13-212 and by adding Section 13-215.1 as
4 follows:

5 (735 ILCS 5/13-212) (from Ch. 110, par. 13-212)

6 Sec. 13-212. Physician or hospital.

7 (a) Except as provided in Section 13-215 or 13-215.1 of
8 this Act, no action for damages for injury or death against any
9 physician, dentist, registered nurse or hospital duly licensed
10 under the laws of this State, whether based upon tort, or
11 breach of contract, or otherwise, arising out of patient care
12 shall be brought more than 2 years after the date on which the
13 claimant knew, or through the use of reasonable diligence
14 should have known, or received notice in writing of the
15 existence of the injury or death for which damages are sought
16 in the action, whichever of such date occurs first, but in no
17 event shall such action be brought more than 4 years after the
18 date on which occurred the act or omission or occurrence
19 alleged in such action to have been the cause of such injury or
20 death.

21 (b) Except as provided in Section 13-215 or 13-215.1 of
22 this Act, no action for damages for injury or death against any
23 physician, dentist, registered nurse or hospital duly licensed
24 under the laws of this State, whether based upon tort, or

1 breach of contract, or otherwise, arising out of patient care
2 shall be brought more than 8 years after the date on which
3 occurred the act or omission or occurrence alleged in such
4 action to have been the cause of such injury or death where the
5 person entitled to bring the action was, at the time the cause
6 of action accrued, under the age of 18 years; provided,
7 however, that in no event may the cause of action be brought
8 after the person's 22nd birthday. If the person was under the
9 age of 18 years when the cause of action accrued and, as a
10 result of this amendatory Act of 1987, the action is either
11 barred or there remains less than 3 years to bring such action,
12 then he or she may bring the action within 3 years of July 20,
13 1987.

14 (c) If the person entitled to bring an action described in
15 this Section is, at the time the cause of action accrued, under
16 a legal disability other than being under the age of 18 years,
17 then the period of limitations does not begin to run until the
18 disability is removed.

19 (d) If the person entitled to bring an action described in
20 this Section is not under a legal disability at the time the
21 cause of action accrues, but becomes under a legal disability
22 before the period of limitations otherwise runs, the period of
23 limitations is stayed until the disability is removed. This
24 subsection (d) does not invalidate any statute of repose
25 provisions contained in this Section. This subsection (d)
26 applies to actions commenced or pending on or after the

1 effective date of this amendatory Act of the 98th General
2 Assembly.

3 (Source: P.A. 98-1077, eff. 1-1-15.)

4 (735 ILCS 5/13-215.1 new)

5 Sec. 13-215.1. Fertility fraud limitation. Notwithstanding
6 any other provision of the law, an action for fertility fraud
7 under the Illinois Fertility Fraud Act must be commenced
8 within the later of 20 years after:

9 (1) the procedure was performed;

10 (2) the 18th birthday of the child;

11 (3) the person first discovers evidence sufficient to
12 bring an action against the defendant through DNA
13 (deoxyribonucleic acid) analysis;

14 (4) the person first becomes aware of the existence of
15 a record that provides evidence sufficient to bring an
16 action against the defendant; or

17 (5) the defendant confesses to the offense.