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# OHIO LEGISLATIVE SERVICE COMMISSION

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133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Powell

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### SUMMARY

- Prohibits a health care professional from purposely or knowingly using human reproductive material from a donor while performing an assisted reproduction procedure if the person receiving the procedure has not expressly consented to the use of that donor's material.
- Makes violation of the prohibition the criminal offense of fraudulent assisted reproduction, a third degree felony, and bars a prosecution unless commenced within ten years after the offense is committed.
- Creates a civil action for remedies specified in the bill for an assisted reproduction procedure performed without consent and permits a separate action to be brought for each child born as a result of the procedure.
- Creates a civil action for remedies specified in the bill in favor of a donor whose human reproductive material is used in an assisted reproduction procedure without his or her consent and permits a separate action to be brought by the donor for each individual receiving the material without the donor's consent.
- Specifies that a plaintiff who prevails in either civil action is entitled to (1) reasonable attorney's fees, and (2) either compensatory and punitive damages or liquidated damages of \$10,000.
- Specifies that a plaintiff who prevails in an action for an assisted reproductive procedure performed without consent is entitled to reimbursement for the cost of the assisted reproduction procedure.
- Specifies that nothing in the bill's provisions governing the civil actions may be construed to prohibit a person from pursuing other remedies for an assisted reproduction procedure performed without consent.

- Requires a civil action created by the bill to be brought not later than ten years after the procedure was performed that gives rise to the action.
- Provides that a civil action barred by the ten-year limitation may be brought against the health care provider not later than five years after the earliest of the date DNA evidence, or a recording providing evidence, sufficient to bring the action is discovered, or the date the health care professional confesses.

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## **DETAILED ANALYSIS**

### **Criminal offense: Fraudulent assisted reproduction**

The bill prohibits a health care professional from purposely or knowingly using human reproductive material from a donor while performing an assisted reproduction procedure if the person receiving the procedure has not expressly consented to the use of the material from that donor. Any person who violates the prohibition is guilty of fraudulent assisted reproduction, a third degree felony.<sup>1</sup> The bill also provides that a prosecution for violation of the prohibition is barred unless it is commenced within ten years after the offense is committed.<sup>2</sup>

### **Civil actions**

#### **For an assisted reproduction procedure performed without consent**

Under the bill, a civil action for the recovery of remedies (discussed below) for an assisted reproduction procedure performed without consent may be brought by (1) the woman on whom the procedure was performed and the woman's spouse or surviving spouse, and (2) the child born as a result of the procedure. A person may bring a separate action for each child born to the person or spouse as a result of an assisted reproduction procedure performed without consent.<sup>3</sup>

#### **For use of donor material without consent**

The bill permits a donor of human reproductive material to bring a civil action for remedies (discussed below) against a health care professional who does both of the following:

1. Performs an assisted reproduction procedure using the donor's human reproductive material;
2. Knowns 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.

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<sup>1</sup> R.C. 2907.13(B) and (C).

<sup>2</sup> R.C. 2901.13(A)(5).

<sup>3</sup> R.C. 4731.87 and 4731.871.

The donor may bring a separate action for each individual who received the donor's human reproductive material without the donor's consent.<sup>4</sup>

## **Remedies**

A plaintiff who prevails in a civil action under the bill is entitled to (1) reasonable attorney's fees, and (2) either compensatory and punitive damages or liquidated damages of \$10,000. A prevailing plaintiff in an action for an assisted reproduction procedure performed without consent also is entitled to reimbursement for the cost of the assisted reproductive procedure.<sup>5</sup>

The bill specifies that nothing in its provisions governing the civil actions and remedies may be construed to prohibit a person from pursuing other remedies provided in Ohio law for an assisted reproduction procedure performed without consent.<sup>6</sup>

## **Limitations of actions**

The bill requires either civil action created by the bill for an assisted reproduction procedure performed without consent must be brought within ten years after the procedure was performed.<sup>7</sup> Any such action that would be barred by the ten-year limitation, however, may be brought not later than five years after the earliest date that any of the following occurs:

1. The discovery of evidence based on deoxyribonucleic acid analysis sufficient to bring the action against the health care professional;
2. The discovery of a recording providing evidence sufficient to bring the action against the health care professional;
3. The health care professional confesses.<sup>8</sup>

## **Definitions**

The bill defines the following terms:

"Assisted reproduction" means a method of causing pregnancy other than through sexual intercourse, including all of the following: (1) intrauterine insemination, (2) human reproductive material donation, (3) in vitro fertilization and transfer of embryos, and (4) intracytoplasmic sperm injection.

"Assisted reproduction performed without consent" means the performance of an assisted reproduction procedure by a health care professional who used either the

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<sup>4</sup> R.C. 4731.88 and 4731.881.

<sup>5</sup> R.C. 4731.89.

<sup>6</sup> R.C. 4731.90.

<sup>7</sup> R.C. 2305.117(B).

<sup>8</sup> R.C. 2305.117(C).

professional's or a donor's human reproductive material without the consent of the woman on whom the procedure was performed.

"Donor" means an individual who provides human reproductive material to a health care professional to be used for assisted reproduction, regardless of whether the human reproductive material is provided for consideration. It does not include any of the following:

1. A husband or a wife who provided human reproductive material to be used for assisted reproduction by the wife;
2. A woman who gives birth to a child by means of assisted reproduction;
3. An unmarried man who, with the intent to be the father of the resulting child, provided human reproductive material to be used for assisted reproduction by an unmarried woman.

"Health care professional" means any of the following: (1) a physician, (2) an advanced practice registered nurse, (3) a certified nurse practitioner, (4) a clinical nurse specialist, (5) a physician's assistant, and (6) a certified nurse-midwife.

"Human reproductive material" means (1) human spermatozoa or ova; or (2) a human organism at any stage of development from fertilized ovum to embryo.<sup>9</sup>

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## HISTORY

Action	Date
Introduced	01-29-20

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H0486-I-133/ts

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<sup>9</sup> R.C. 2907.13(A) and 4731.86(B).