

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: S3/16/21
A Bill

SENATE BILL 474

By: Senators Beckham, *B. Ballinger, Bledsoe, L. Chesterfield, Elliott, Flippo, Gilmore, B. Johnson, M. Johnson*

By: Representatives Gazaway, *Beaty Jr., S. Berry, Brown, Cloud, Furman, Jean, McCollum, Richmond, Scott, Wardlaw*

For An Act To Be Entitled

AN ACT TO CREATE THE CRIMINAL OFFENSES OF FERTILITY TREATMENT ABUSE AND FERTILITY TREATMENT FRAUD; TO CREATE THE CIVIL ACTION OF CIVIL FERTILITY FRAUD; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE CRIMINAL OFFENSES OF FERTILITY TREATMENT ABUSE AND FERTILITY TREATMENT FRAUD; AND TO CREATE THE CIVIL ACTION OF CIVIL FERTILITY FRAUD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-1-109(a)(1), concerning statutes of limitation for certain felony offenses, is amended to add an additional subdivision to read as follows:

(N) Fertility treatment fraud, § 5-37-220.

SECTION 2. Arkansas Code Title 5, Chapter 13, Subchapter 2, is amended to add an additional section to read as follows:

5-13-212. Fertility treatment abuse.

(a) As used in this section:

(1) "Healthcare provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer



health care in the ordinary course of the practice of his or her profession;

(2) "Human reproductive material" means the same as defined in § 5-37-220; and

(3) "Unauthorized" means that a person receiving human reproductive material in an assisted reproduction procedure has not expressly consented to the use of the human reproductive material.

(b) A person commits fertility treatment abuse if the person is a healthcare provider who, in the course of performing an assisted reproduction procedure on a person, knowingly uses unauthorized human reproductive material.

(c) Fertility treatment abuse is a Class B felony.

SECTION 3. Arkansas Code Title 5, Chapter 37, Subchapter 2, is amended to add an additional section to read as follows:

5-37-220. Fertility treatment fraud.

(a) As used in this section:

(1) "Fertility treatment" means a treatment for infertility, pregnancy, surrogacy, or childbearing; and

(2) "Human reproductive material" means:

(A) A human spermatozoon or ovum; or

(B) A human organism at any stage of development from fertilized ovum to embryo.

(b) A person commits the offense of fertility treatment fraud if the person, with the purpose to defraud a person undergoing fertility treatment, misrepresents the:

(1) Identity of a person who has donated or is donating human reproductive material to the person undergoing fertility treatment; or

(2) Quality of the:

(A) Human reproductive material used in the fertility treatment; or

(B) Fertility treatment procedure.

(c) Fertility treatment fraud is a Class C felony.

SECTION 4. Arkansas Code Title 16, Chapter 118, is amended to add an additional section to read as follows:

16-118-117. Civil fertility fraud.

(a) As used in this section:

(1) "Healthcare provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession; and

(2) "Human reproductive material" means:

(A) A human spermatozoon or ovum; or

(B) A human organism at any stage of development from fertilized ovum to embryo.

(b) A person may bring an action for civil fertility fraud against a healthcare provider who knowingly:

(1) Treated the person or the spouse of the person for infertility, pregnancy, surrogacy, or childbearing by using the healthcare provider's own human reproductive material or the human reproductive material of another person without the person's informed written consent to treatment using the healthcare provider's own human reproductive material or the human reproductive material of the other person;

(2) Treated the person or the spouse of the person for infertility, pregnancy, surrogacy, or childbearing by using human reproductive material donated by a donor knows or reasonably should have known that the human reproductive material was used:

(A) Without the donor's consent; or

(B) In a manner or to an extent other than that to which the donor consented; or

(3) Used the person's human reproductive material to treat another person for infertility, pregnancy, surrogacy, or childbearing knowing or being in a position to reasonably know that the person did not consent to his or her human reproductive material's being used or used in a manner or to an extent other than that to which the person consented.

(c) An action under this section may be commenced not later than five (5) years after the earliest of the date on which:

(1) The person first discovers evidence sufficient to bring an action against the healthcare provider through deoxyribonucleic acid (DNA) analysis or other more accurate scientific analysis;

(2) The person first becomes aware of the existence of a recording that provides evidence sufficient to bring an action against the

healthcare provider; or

(3) The defendant admits to the facts giving rise to the action.

(d) A plaintiff who prevails in an action under this section is entitled to:

(1) Reasonable attorney's fees;

(2) The costs of the fertility treatment as applicable; and

(3) Economic, compensatory, and punitive damages.

(e) A person who brings an action under subdivision (b)(1) or subdivision (b)(2) of this section has a separate cause of action for each child born as the result of the fraudulent fertility treatment.

(f) A person who brings an action under subdivision (b)(4) of this section has a separate cause of action for each fertility patient who received a fertility treatment with the person's human reproductive material.

(g) This section does not prohibit a person from pursuing any other remedy provided by law.

SECTION 5. DO NOT CODIFY. Conflicts with other law.

This act does not affect § 16-120-901 et seq.

/s/Beckham