

SENATE BILL REPORT

SB 5348

As of February 1, 2022

Title: An act relating to assisted reproduction.

Brief Description: Concerning assisted reproduction.

Sponsors: Senators Stanford, Dhingra, Hasegawa, Hunt and Salomon.

Brief History:

Committee Activity: Law & Justice: 2/01/22.

Brief Summary of Bill

- Creates a civil cause of action for damages for false representation in assisted reproduction.
- Makes false representation in assisted reproduction a basis for unprofessional conduct in regulatory license actions.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Fraud in Assisted Reproduction. Assisted reproduction means a method of causing pregnancy other than sexual intercourse including intrauterine or intracervical insemination, donation of gametes, donation of embryos, in-vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection.

With the advent of commercially available genetic testing, many families who used assisted reproduction have discovered their doctors unsuspectingly used their own genetic material during the insemination process. While this process has only recently come to light, the practice has been ongoing for decades. A 1987 survey by the federal office of technology assessment found that approximately 2 percent of fertility doctors who responded had used

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their own sperm in inseminate patients. From 1974 to 1987, a single doctor in Indiana used his own genetic material in fertility treatments dozens of times resulting in at least 50 children.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A civil cause of action for damages is created for false representation in assisted reproduction. This cause of action may be maintained by a child conceived by assisted reproduction, a donor, a patient who used assisted reproduction with a health care provider or at a health care facility, or a patient's spouse at the time when the patient used assisted reproduction.

Each parent is entitled to recover for their loss separately from the other. If only one parent brings an action, and the other parent is not named as a plaintiff, notice of the suit, along with a copy of the complaint must be served upon the other parent. This is contingent only if parentage has been duly established.

Such a cause of action for false representation in assisted reproduction may be brought against a person who knowingly provides false information to a patient related to:

- an assisted reproduction procedure or treatment;
- the human reproductive material used or provided for assisted reproduction;
- the identity of a donor of human reproductive material used or provided for assisted reproduction including, but not limited to, the donor's name, birthdate, or address at the time of donation; or
- a donor's medical history including, but not limited to, a present illness of a donor at the time of donation, a past illness of a donor, or the social, genetic, or family history pertaining to a donor's health.

A cause of action may also be brought against a health care provider who knowingly uses or provides human reproductive material for assisted reproduction other than the human reproductive material the health care provider agreed to be used or provided in writing.

A cause of action may be brought against an entity that is licensed or operating in Washington State as a health care facility, gamete bank, or fertility clinic when it:

- provides a patient with human reproductive material other than the human reproductive material that was agreed to be provided in writing between the patient and the entity;
- disregards agreements between the donor and the gamete bank, fertility clinic, or health care facility; or
- fails to make good faith efforts to provide a child conceived by assisted reproduction with a donor's identifying information as required by law.

The plaintive in such a civil action must prove by a preponderance of the evidence that the defendant or defendants made false representations in assisted reproduction to a patient,

donor, or child conceived by assisted reproduction as described above. Each act of false representation is a violation, and the defendant or defendants are liable for civil damages of \$5,000 or economic and noneconomic damages, whichever is greater, as well as reasonable attorneys' fees.

Unprofessional Conduct. It is unprofessional conduct for any license holder under the jurisdiction of the statutory regulations of healthcare professions to commit false representation in assisted reproduction as described above.

Appropriation: None.

Fiscal Note: Requested on January 24, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony On Proposed Substitute: PRO: Sometimes a fertility clinic or doctor has lied about a medical procedure or their genetic parentage. That is a legal and ethical breach. The children have very little opportunity to seek justice. The children are deprived of knowledge of parentage, medical history, and of what was intended. We need to prevent this from happening to others.

In 2019 I took an over-the-counter DNA test and found out that my biological father is my mother's doctor who abused his position as a trusted professional. Fertility fraud is more than just doctor donor fraud. Donors lie about their medical background in order to get more money. Donor conceived children may not have any right to the medical background of the donors.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Traci Portugal; Jennifer Gogarten, University of Washington Institute for Public Health Genetics; Kara Rubinstein Deyerin, Right To Know; Jana Rupnow, Jana Rupnow LPC; Sarah Chicoine; Alesia Weiss.

Persons Signed In To Testify But Not Testifying: No one.