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HOUSE BILL 25-1259

BY REPRESENTATIVE(S) Froelich and Brown, Boesenecker, Clifford, Lindsay, Willford, Woodrow, Bacon, Garcia, Lieder, Lukens, Mabrey, McCormick, Rutinel, Sirota, Stewart R., Story, Valdez, Velasco, Zokaie; also SENATOR(S) Cutter and Daugherty, Jodeh, Michaelson Jenet, Mullica, Sullivan, Wallace, Winter F.

CONCERNING ASSISTED REPRODUCTION, AND, IN CONNECTION THEREWITH, ADOPTING IN VITRO FERTILIZATION AND OTHER ASSISTED REPRODUCTION AND FERTILITY PROTECTIONS AND ELIMINATING OTHER ADMINISTRATIVE REQUIREMENTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Reducing Barriers to Building Families Act".

SECTION 2. Legislative declaration. (1) The general assembly finds that:

(a) On February 16, 2024, the Alabama supreme court ruled that embryos formed through in vitro fertilization, or IVF, are considered children under the state's "Wrongful Death of a Minor Act";

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) The ruling raised great concerns about the impact on, in particular, provision of women's health-care services, fertility care for all individuals, and assisted reproductive technologies.

(c) After the ruling, IVF clinics in Alabama ceased providing infertility medical services and also ceased transferring embryos owned by their patients to clinics outside of Alabama due to potential legal and felony risks if an embryo was inadvertently destroyed.

(2) (a) The Alabama ruling, coupled with new, intrusive, and difficult-to-implement requirements for gamete donation, has had negative impacts on people seeking fertility treatments in Colorado.

(b) Colorado has been recognized for decades as a medical destination for those seeking sophisticated and cutting-edge medical care for infertility. Colorado's fertility clinics are highly respected; the state's medical practitioners are known as pioneers in assisted reproductive technologies, or ART medical care; and Colorado continues to advance and provide top-notch ART fertility care.

(c) Equally matching its sophisticated ART medical care, Colorado also ranks highly among all states due to its progressive laws and legal protections for children born through assisted reproductive technologies, laws that ensure donors of gametes (ova and sperm) and embryos are not considered legal parents of any resulting children, and the laws protect the parental rights of parents whose children are born through ART, including through donated gametes and surrogacy. Children born through ART in Colorado legally are able to know who their parents are from the moment of birth, and potential parents are likewise safeguarded due to Colorado's protections, including not requiring a genetic relationship between parent and child and not requiring parents to be married, and including opposite gender individuals' access to ART, making Colorado a top choice for domestic and international individuals seeking assisted reproduction medical care treatment options.

(3) Therefore, the general assembly declares that:

(a) Colorado should remain a world-class destination for all people who want to start a family, providing safe, cutting-edge medical care for

individuals in need of those services;

(b) It is also important to keep the transparency and rules around disclosure in order to address the concerns of donor-conceived individuals while preserving the whole ecosystem of Colorado's world-class assisted reproduction technologies, infertility medical care options, and gamete donation medical environment; and

(c) This act seeks to streamline implementation of the provisions of the "Donor-Conceived Persons Protection Act" while preserving the important transparency and reporting requirements.

SECTION 3. In Colorado Revised Statutes, **add** 25-57-113 as follows:

25-57-113. Reproductive health care - fertility treatment - protections - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FERTILITY TREATMENT" MEANS ANY TEST, PROCEDURE, MEDICATION, SURGERY, OR SERVICE TO DIAGNOSE, ENHANCE, OR ASSIST AN INDIVIDUAL'S ABILITY TO REPRODUCE OR ACHIEVE PREGNANCY, INCLUDING, BUT NOT LIMITED TO:

(I) IN VITRO FERTILIZATION;

(II) INTRAUTERINE INSEMINATION;

(III) OVULATION INDUCTION;

(IV) TESTICULAR OR OVARIAN BIOPSY;

(V) EMBRYO BIOPSY;

(VI) CRYOPRESERVATION AND THAWING OF GAMETES AND EMBRYOS;

(VII) CRYOPRESERVATION OF TESTICULAR AND OVARIAN TISSUE;

(VIII) STORAGE, DONATION, OR DISPOSAL OF GAMETES, EMBRYOS,

OR REPRODUCTIVE TISSUE;

(IX) PRE-IMPLANTATION GENETIC TESTING, OR ANY OTHER MEDICAL SCREENING OR EVALUATION OF EMBRYOS OR GAMETES; AND

(X) SURROGACY.

(b) "REPRODUCTIVE HEALTH CARE" HAS THE SAME MEANING SET FORTH IN SECTION 25-6-402.

(2) EVERY INDIVIDUAL HAS A RIGHT TO MAKE AUTONOMOUS DECISIONS ABOUT THE INDIVIDUAL'S OWN REPRODUCTIVE HEALTH, INCLUDING THE RIGHT TO USE OR REFUSE REPRODUCTIVE HEALTH CARE, INCLUDING THE RIGHT TO USE GAMETES AND EMBRYOS, DESTROY GAMETES AND EMBRYOS, AND INCLUDING THE RIGHT TO DONATE GAMETES AND EMBRYOS TO THIRD PARTIES FOR PROCREATION OR RESEARCH. THIS SUBSECTION (2) DOES NOT PREVENT OR LIMIT THE IMPLEMENTATION OF OTHER PROVISIONS OF THIS ARTICLE 57.

(3) THE STATE AND LOCAL GOVERNMENTS SHALL NOT INTERFERE WITH OR RESTRICT A PHYSICIAN OR LICENSED MEDICAL PROVIDER'S ABILITY TO PROVIDE REPRODUCTIVE HEALTH CARE, AS DEFINED IN THIS SECTION.

(4) IT IS CONTRARY TO THE PUBLIC POLICY OF THIS STATE TO PERMIT AN INDIVIDUAL TO BRING A CIVIL OR CRIMINAL ACTION AUTHORIZED IN ANOTHER STATE AGAINST AN INDIVIDUAL IN THIS STATE FOR ENGAGING OR ATTEMPTING TO ENGAGE IN THE FOLLOWING CONDUCT:

(a) TERMINATING OR SEEKING TO TERMINATE A PREGNANCY;

(b) PERFORMING OR INDUCING THE TERMINATION OF A PREGNANCY;

(c) KNOWINGLY ENGAGING IN CONDUCT THAT AIDS OR ABETS THE PERFORMANCE OR INDUCEMENT OF THE TERMINATION OF PREGNANCY;

(d) PROVIDING REPRODUCTIVE HEALTH CARE, AS DEFINED IN THIS SECTION; OR

(e) PROVIDING FERTILITY TREATMENT, AS DEFINED IN THIS SECTION.

SECTION 4. In Colorado Revised Statutes, 25-57-104, **amend** (1); and **add** (1.5) as follows:

25-57-104. Collection of identifying information and medical history - applicability. (1) Except as provided in subsection (3) of this section, a gamete agency, gamete bank, or fertility clinic that collects gametes from a donor or matches a donor with a recipient shall collect the donor's identifying information and medical history. ~~and shall make a good faith effort to maintain current contact information and updates on the medical history of the donor by requesting updates from the donor at least once every three years.~~

(1.5) (a) A GAMETE AGENCY, GAMETE BANK, OR FERTILITY CLINIC SHALL ENCOURAGE A DONOR TO INFORM THE GAMETE AGENCY, GAMETE BANK, OR FERTILITY CLINIC OF SIGNIFICANT MEDICAL HISTORY UPDATES AFTER DONATION.

(b) A GAMETE AGENCY, GAMETE BANK, OR FERTILITY CLINIC SHALL DOCUMENT A DONOR'S REPORT OF ANY SIGNIFICANT MEDICAL HISTORY UPDATES, AND THE INFORMATION SHALL BE RETAINED AS PART OF THE RECORDS REFERENCED IN SECTION 25-57-107.

(c) A GAMETE AGENCY, GAMETE BANK, OR FERTILITY CLINIC SHALL DOCUMENT A DONOR'S REPORT OF SIGNIFICANT MEDICAL HISTORY UPDATES AFTER DONATION.

SECTION 5. In Colorado Revised Statutes, 25-57-106, **amend** (1) as follows:

25-57-106. Disclosure of identifying information and medical history - applicability. (1) Except as provided in subsection (4) of this section, upon the request of a donor-conceived person who is eighteen years of age or older, a gamete agency, gamete bank, or fertility clinic that matched or collected the gametes used in the assisted reproduction of ~~such~~ THE donor-conceived person shall provide the donor-conceived person with the identifying information of the donor who provided the gametes or embryo. A gamete agency, gamete bank, or fertility clinic shall not impede or prohibit compliance with this section or communication between:

(a) An adult donor-conceived person and the donor whose gametes

were used to conceive the donor-conceived person; or

(b) An adult donor-conceived person and the person's friends, family, or other third parties about the donor whose gametes were used to conceive the donor-conceived person. THE DONOR-CONCEIVED PERSON HAS THE RIGHT, IN ACCORDANCE WITH RELEVANT LAWS, TO CONTACT THE DONOR. THE DONOR HAS A RIGHT TO RESPOND, ENGAGE, OR DECLINE CONTACT AND COMMUNICATION.

(c) A GAMETE AGENCY, GAMETE BANK, OR FERTILITY CLINIC IS ENCOURAGED TO PROVIDE INFORMATION TO A DONOR-CONCEIVED PERSON REGARDING THE PHYSICAL AND EMOTIONAL RISKS ASSOCIATED WITH PUBLICLY RELEASING A DONOR'S PRIVATE AND SENSITIVE INFORMATION.

SECTION 6. In Colorado Revised Statutes, 25-57-107, **amend** (3), (6), and (7)(b) as follows:

25-57-107. Record keeping - successor record keeper - applicability. (3) ~~Except as provided in subsection (6) of this section, in its application for a license pursuant to section 25-57-110, a gamete agency, gamete bank, or fertility clinic shall submit a proposed plan to permanently maintain the records described in subsections (1) and (2) of this section in the event of dissolution, insolvency, or bankruptcy. The plan may include identification of a named entity to receive or maintain the records, obtaining a surety bond in favor of a third party in an amount sufficient to cover the costs of permanent record keeping, an obligation to condition any sale on the acquiring entity's obligation to maintain records consistent with this section, or similar methods. The department shall not issue a license pursuant to section 25-57-110 until it approves a plan that it finds sufficient to ensure that the records will be permanently maintained by a viable entity.~~ A GAMETE AGENCY, GAMETE BANK, OR FERTILITY CLINIC SHALL CREATE A PLAN TO PERMANENTLY MAINTAIN THE INFORMATION REQUIRED BY THIS SECTION, INCLUDING IN THE CASE OF DISSOLUTION, INSOLVENCY, OR BANKRUPTCY, AND SHALL MAKE THE PLAN AVAILABLE FOR INSPECTION UPON REQUEST BY THE DEPARTMENT.

(6) A gamete bank or fertility clinic that collects gametes from a donor who was matched with a recipient by a gamete agency that is a separate entity is not subject to the requirements of ~~subsection (1), (3), or (4)~~ SUBSECTION (1) OR (3) of this section.

(7) (b) ~~Subsections (1), (3), and (4)~~ SUBSECTIONS (1) AND (3) of this section apply only to gametes matched or collected on or after January 1, 2025, for use by a recipient parent or parents who are unknown to the donor at the time of the donation.

SECTION 7. In Colorado Revised Statutes, 25-57-108, **amend** (1) introductory portion, (2) introductory portion, and (4) introductory portion; **repeal** (3); and **add** (5) as follows:

25-57-108. Written materials for recipient parents and gamete donors. (1) On or before January 1, 2025, the department shall develop written materials for intended recipient parents AND SHALL POST THE WRITTEN MATERIALS ON ITS WEBSITE. The department shall develop the materials in conjunction with licensed mental health professionals who have prior documented experience counseling gamete donors, recipients, and donor-conceived persons, as well as experience and competency in counseling families with lesbian, gay, bisexual, and transgender parents and single parents, along with organizations representing these communities. The materials must include information on the following subjects:

(2) On or before January 1, 2025, the department shall develop written materials for gamete donors AND THE DEPARTMENT SHALL POST THE WRITTEN MATERIALS ON ITS WEBSITE. The department shall develop the materials in conjunction with licensed mental health professionals who have prior documented experience counseling gamete donors, recipients, and donor-conceived persons, as well as experience and competency in counseling families with lesbian, gay, bisexual, and transgender parents and single parents, along with organizations representing these communities. The materials must include information on the following subjects:

(3) ~~A gamete agency, gamete bank, or fertility clinic located in Colorado shall:~~

(a) ~~Prior to an intended recipient matching with or receiving donor gametes obtained through that gamete agency, gamete bank, or fertility clinic, provide the written materials described in subsection (1) of this section to each intended recipient of gametes from a donor who is unknown to the recipient or recipients; and~~

(b) ~~Prior to the donation of gametes by a donor, provide the written~~

~~materials described in subsection (2) of this section to each potential donor of gametes collected by the gamete agency, gamete bank, or fertility clinic from a donor who is unknown to the recipient or recipients and discuss these materials with the donor. Donor receipt of the written materials is not in lieu of any mental health evaluations of an unknown donor that are required by the individual practices of a gamete agency, gamete bank, or fertility clinic.~~

(4) A gamete agency, gamete bank, or fertility clinic ~~located outside of Colorado~~ that either matches donors to or provides gametes or embryos to recipients in Colorado shall:

(5) GAMETE AGENCIES, GAMETE BANKS, AND FERTILITY CLINICS ARE NOT REQUIRED TO USE THE WRITTEN MATERIALS DESCRIBED IN SUBSECTION (2) OF THIS SECTION BUT MAY USE THEM TO MEET THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION.

SECTION 8. In Colorado Revised Statutes, 25-57-109, **amend** (1)(a) as follows:

25-57-109. Donor age limits - limits on number of families per donor - restriction on dissemination of gametes - limits on egg-retrieval cycles per ovum donor - rules - applicability. (1) (a) Except as provided in subsection (4) of this section, a gamete agency, gamete bank, or fertility clinic shall make a good faith effort to determine how many families are established with gametes matched or provided by the gamete agency, gamete bank, or fertility clinic from each donor. ~~by~~ METHODS OF GOOD FAITH EFFORTS MAY INCLUDE, BUT ARE NOT LIMITED TO, conducting sufficient record-keeping, requiring recipients, as a condition of receiving donor gametes, to provide information on live births, and requesting information from recipients on live births, and using industry best practices, including methods or processes to account for the number or percentage of live births that are likely not reported, such as the correlation between the number of units of donor gametes sold or released and the resulting live births. A gamete agency, gamete bank, or fertility clinic shall not match or provide gametes from a donor to additional families once the gamete agency, gamete bank, or fertility clinic has record of or should reasonably know that twenty-five families have been established using a single donor's gametes in or outside of Colorado, with no limit on the number of children conceived by each of the families, unless the donor requests, and the gamete

agency, gamete bank, or fertility clinic agrees to, a lower limit on the number of families. This limit does not include any children conceived by the donor as a parent or children conceived with the donor's gametes when the donor is known to the recipient parent or parents at the time of the donation. This limit does not include donations of embryos from one family to another family.

SECTION 9. In Colorado Revised Statutes, 25-57-110, **amend** (3)(a)(I); and **repeal** (3)(a)(III) as follows:

25-57-110. License required - application - inspection - issuance, denial, suspension, or revocation - fees - civil penalties - rules.
(3) (a) (I) The department shall investigate and review each original application and each renewal application for a license to operate as a gamete agency, gamete bank, or fertility clinic. The department shall require all applicants to submit information in the original and renewal application process to document compliance with licensing requirements. ~~Subject to available appropriations, the department may, as it deems necessary, perform on-site inspections or complaint investigations of a gamete agency, gamete bank, or fertility clinic located outside of Colorado.~~ The department shall determine an applicant's compliance with this article 57, and the rules adopted pursuant to this article 57, for the collection and provision of gametes from donors who are unknown to a recipient at the time of the donation before issuing a license.

~~(III) When investigating or reviewing the records of a gamete agency, gamete bank, or fertility clinic located outside of Colorado, the department shall investigate and review only the records pertaining to donors whose gametes or embryos were matched or provided to recipients in Colorado.~~

SECTION 10. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO