

HOUSE BILL 95

J1, J3

5lr1208

(PRE-FILED)

By: **Delegate Allen**

Requested: October 14, 2024

Introduced and read first time: January 8, 2025

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Providers – Assisted Reproductive Treatment – Informed Consent**
3 **and Fraud**

4 FOR the purpose of prohibiting a health care provider from using the health care provider's
5 reproductive material when providing assistive reproductive treatment without the
6 consent of the recipient of the treatment; prohibiting a health care provider from
7 using a donor's reproductive material to provide assisted reproductive treatment
8 without the donor's informed consent or in a manner that is inconsistent with the
9 donor's consent; requiring a health care provider to obtain certain informed consent
10 before providing assistive reproductive treatment; prohibiting a health care provider
11 and an employee of a health care provider from misrepresenting certain information
12 regarding human reproductive material or the donor of the material to the recipient
13 of an assisted reproductive treatment; and generally relating to assisted
14 reproductive treatment and health care provider fraud.

15 BY adding to
16 Article – Health – General
17 Section 20–112
18 Annotated Code of Maryland
19 (2023 Replacement Volume and 2024 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Health – General**

23 **20–112.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "ASSISTED REPRODUCTIVE TREATMENT" MEANS A METHOD OF CAUSING PREGNANCY OTHER THAN THROUGH SEXUAL INTERCOURSE.

(II) "ASSISTED REPRODUCTIVE TREATMENT" INCLUDES:

1. DONATION OF EGGS OR SPERM;
2. DONATION OF EMBRYOS;
3. INTRACYTOPLASMIC SPERM INJECTION;
4. INTRAUTERINE OR INTRACERVICAL INSEMINATION;
5. IN VITRO FERTILIZATION AND EMBRYO TRANSFER.

(3) "DONOR" MEANS AN INDIVIDUAL WHO PROVIDES, WITH OR WITHOUT CONSIDERATION, SPERM OR AN OVUM INTENDED FOR USE IN ASSISTED REPRODUCTIVE TREATMENT.

(4) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE ASSISTED REPRODUCTIVE TREATMENT.

(5) "HUMAN REPRODUCTIVE MATERIAL" MEANS:

(I) HUMAN SPERMATOZOON;

(II) HUMAN OVUM; OR

(III) A HUMAN ORGANISM AT ANY STAGE OF DEVELOPMENT FROM FERTILIZED OVUM TO EMBRYO.

(6) "INFORMED CONSENT" MEANS A WRITTEN DOCUMENT THAT:

(I) IS SIGNED BY THE PATIENT; AND

(II) IS ATTESTED TO BY THE PATIENT'S TREATING HEALTH CARE PROVIDER AND A WITNESS.

1 **(B) BEFORE PROVIDING AN ASSISTED REPRODUCTIVE TREATMENT, A**
2 **HEALTH CARE PROVIDER SHALL:**

3 **(1) OBTAIN A DONOR'S WRITTEN CONSENT TO USE THE DONOR'S**
4 **REPRODUCTIVE MATERIAL;**

5 **(2) OBTAIN A RECIPIENT'S CONSENT TO USE A SPECIFIC DONOR'S**
6 **REPRODUCTIVE MATERIAL;**

7 **(3) ENSURE THAT CONSENT FOR THE USE OF HUMAN REPRODUCTIVE**
8 **MATERIAL IS PROVIDED ON A FORM THAT IS DISTINCT AND SEPARATE FROM ANY**
9 **OTHER CONSENT FORM; AND**

10 **(4) MAINTAIN A COPY OF WRITTEN CONSENT OBTAINED UNDER ITEM**
11 **(1) OR (2) OF THIS SUBSECTION IN THE PROVIDER'S PATIENT RECORDS.**

12 **(C) (1) A HEALTH CARE PROVIDER SHALL:**

13 **(I) USE HUMAN REPRODUCTIVE MATERIAL FROM A DONOR**
14 **WITH THE RECIPIENT'S INFORMED CONSENT TO USE THAT DONOR'S REPRODUCTIVE**
15 **MATERIAL DURING ASSISTED REPRODUCTIVE TREATMENT;**

16 **(II) USE A DONOR'S HUMAN REPRODUCTIVE MATERIAL FOR**
17 **ASSISTED REPRODUCTIVE TREATMENT:**

18 **1. WITH THE DONOR'S INFORMED CONSENT; AND**

19 **2. IN A MANNER THAT IS CONSISTENT WITH THE**
20 **DONOR'S INFORMED CONSENT;**

21 **(III) INFORM THE RECIPIENT OF ANY MISUSE,**
22 **MISREPRESENTATION, OR ERROR INVOLVING THE REPRODUCTIVE MATERIAL USED**
23 **IN THE ASSISTED REPRODUCTIVE TREATMENT; AND**

24 **(IV) REPORT MISUSE, MISREPRESENTATION, OR ERROR**
25 **INVOLVING THE REPRODUCTIVE MATERIAL USED IN THE ASSISTED REPRODUCTIVE**
26 **TREATMENT TO THE HEALTH CARE PROVIDER'S LICENSING BOARD.**

27 **(2) A HEALTH CARE PROVIDER MAY NOT:**

28 **(I) INTENTIONALLY OR KNOWINGLY PROVIDE ASSISTED**
29 **REPRODUCTIVE TREATMENT TO A PATIENT USING THE HEALTH CARE PROVIDER'S**
30 **SPERM OR OVUM WITHOUT THE PATIENT'S INFORMED CONSENT TO ASSISTED**

1 REPRODUCTIVE TREATMENT USING THE HEALTH CARE PROVIDER'S SPERM OR
2 OVUM; OR

3 (II) PROVIDE ASSISTED REPRODUCTIVE TREATMENT USING A
4 DONOR'S SPERM OR OVUM IF THE HEALTH CARE PROVIDER KNOWS OR REASONABLY
5 SHOULD KNOW THAT THE HUMAN REPRODUCTIVE MATERIAL WAS USED:

6 1. WITHOUT THE DONOR'S CONSENT; OR

7 2. IN A MANNER INCONSISTENT WITH THE DONOR'S
8 CONSENT.

9 (3) A HEALTH CARE PROVIDER OR AN EMPLOYEE OF A HEALTH CARE
10 PROVIDER WHO HANDLES HUMAN REPRODUCTIVE MATERIAL MAY NOT:

11 (I) MISREPRESENT THE QUALITY OF THE HUMAN
12 REPRODUCTIVE MATERIAL TO THE RECIPIENT OF AN ASSISTED REPRODUCTIVE
13 TREATMENT; OR

14 (II) MISREPRESENT ANY INFORMATION ABOUT THE DONOR'S
15 IDENTITY, GENETIC CHARACTERISTICS, OR MEDICAL HISTORY TO THE RECIPIENT
16 OF AN ASSISTED REPRODUCTIVE TREATMENT.

17 (D) (1) A HEALTH CARE PROVIDER WHO VIOLATES SUBSECTION (C)(2)(I)
18 OF THIS SECTION IS LIABLE FOR CIVIL DAMAGES IN AN ACTION BROUGHT BY:

19 (I) THE WOMAN WHO GIVES BIRTH TO A CHILD AFTER
20 RECEIVING THE ASSISTED REPRODUCTIVE TREATMENT;

21 (II) THE SPOUSE OR DOMESTIC PARTNER OF THE WOMAN WHO
22 GIVES BIRTH TO A CHILD AFTER RECEIVING THE ASSISTED REPRODUCTIVE
23 TREATMENT; OR

24 (III) THE CHILD BORN AS A RESULT OF THE ASSISTED
25 REPRODUCTIVE TREATMENT.

26 (2) A HEALTH CARE PROVIDER WHO VIOLATES SUBSECTION (C)(2)(II)
27 OF THIS SECTION IS LIABLE FOR CIVIL DAMAGES IN AN ACTION BROUGHT BY A
28 DONOR WHOSE REPRODUCTIVE MATERIAL WAS USED BY THE HEALTH CARE
29 PROVIDER FOR ASSISTIVE REPRODUCTIVE TREATMENT WITHOUT THE DONOR'S
30 CONSENT OR NOT IN COMPLIANCE WITH THE DONOR'S CONSENT.

1 **(3) AN INDIVIDUAL WHO BRINGS AN ACTION UNDER THIS SECTION**
2 **MAY ASSERT A SEPARATE CAUSE OF ACTION:**

3 **(I) FOR A VIOLATION OF SUBSECTION (C)(2)(I) OF THIS**
4 **SECTION, FOR EACH CHILD BORN AS THE RESULT OF THE ASSISTED REPRODUCTIVE**
5 **TREATMENT; AND**

6 **(II) FOR A VIOLATION OF SUBSECTION (C)(2)(II) OF THIS**
7 **SECTION, FOR EACH INDIVIDUAL WHO RECEIVED ASSISTED REPRODUCTIVE**
8 **TREATMENT WITH THE DONOR'S HUMAN REPRODUCTIVE MATERIAL.**

9 **(4) A CHILD BORN AS A RESULT OF ASSISTED REPRODUCTIVE**
10 **TREATMENT PROVIDED BY A HEALTH CARE PROVIDER IN VIOLATION OF**
11 **SUBSECTION (C)(2)(I) OF THIS SECTION IS ENTITLED TO A QUALIFIED PROTECTIVE**
12 **ORDER ALLOWING THE CHILD ACCESS TO THE PERSONAL MEDICAL RECORDS AND**
13 **HEALTH HISTORY OF THE HEALTH CARE PROVIDER.**

14 **(5) A CIVIL ACTION UNDER THIS SECTION SHALL BE FILED:**

15 **(I) WITHIN 10 YEARS AFTER THE CHILD BORN AS A RESULT OF**
16 **THE ASSISTED REPRODUCTIVE TREATMENT REACHES THE AGE OF 18 YEARS;**

17 **(II) WITHIN 20 YEARS AFTER THE DAY ON WHICH THE ASSISTED**
18 **REPRODUCTIVE TREATMENT WAS PROVIDED; OR**

19 **(III) WITHIN 2 YEARS AFTER THE DAY ON WHICH AN INDIVIDUAL**
20 **FIRST DISCOVERS SUFFICIENT EVIDENCE THROUGH DNA ANALYSIS THAT THE**
21 **INDIVIDUAL HAS A CAUSE OF ACTION AGAINST A HEALTH CARE PROVIDER UNDER**
22 **THIS SECTION.**

23 **(6) A PLAINTIFF WHO PREVAILS IN AN ACTION BROUGHT UNDER THIS**
24 **SECTION SHALL BE ENTITLED TO:**

25 **(I) FOR AN ACTION BROUGHT UNDER SUBSECTION (C)(2)(I) OF**
26 **THIS SECTION, THE COSTS OF THE ASSISTED REPRODUCTIVE TREATMENT;**

27 **(II) LIQUIDATED DAMAGES NOT TO EXCEED \$50,000;**

28 **(III) COMPENSATORY DAMAGES; AND**

29 **(IV) REASONABLE ATTORNEY'S FEES AND COSTS.**

1 **(E) (1) A HEALTH CARE PROVIDER MAY NOT INTENTIONALLY OR**
2 **KNOWINGLY PROVIDE ASSISTED REPRODUCTIVE TREATMENT TO A PATIENT USING**
3 **THE HEALTH CARE PROVIDER'S SPERMATOZOOM OR OVUM WITHOUT THE PATIENT'S**
4 **INFORMED CONSENT TO ASSISTED REPRODUCTIVE TREATMENT USING THE HEALTH**
5 **CARE PROVIDER'S SPERMATOZOOM OR OVUM.**

6 **(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION**
7 **IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**
8 **EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.**

9 **(F) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A PERSON FROM**
10 **PURSUING ANY OTHER REMEDY PROVIDED BY LAW.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2025.