

FOR CONSIDERATION By the Committee on Judiciary

590-01086B-10

20107062

1 A bill to be entitled
2 An act relating to assisted reproductive technology;
3 creating s. 742.125, F.S.; creating the "Florida
4 Assisted Reproductive Technology Act"; amending s.
5 742.13, F.S.; conforming a cross-reference to changes
6 made by the act; amending s. 742.14, F.S.; correcting
7 a cross-reference; creating s. 742.175, F.S.;
8 providing definitions; providing general requirements
9 that an assisted reproductive technology agency must
10 follow; requiring an assisted reproductive technology
11 agency to establish an escrow account for certain
12 funds; requiring an assisted reproductive technology
13 agency to obtain express and informed consent from
14 participants; prescribing requirements for contracts
15 for third-party reproductive services; prescribing
16 requirements for advertising by an assisted
17 reproductive technology agency; prohibiting an
18 assisted reproductive technology agency from engaging
19 in third-party reproductive services if the owner or
20 operator of the agency has had any arrests, charges,
21 or convictions related to certain crimes; prohibiting
22 an assisted reproductive technology agency from using
23 the services of persons who are not United States
24 citizens or permanent residents; providing penalties
25 and remedies; providing for recovery of attorney's
26 fees under certain circumstances; providing an
27 effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

590-01086B-10

20107062

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

Section 1. Section 742.125, Florida Statutes, is created to read:

742.125 Short title.—Sections 742.125-742.175 may be cited as the “Florida Assisted Reproductive Technology Act.”

Section 2. Section 742.13, Florida Statutes, is amended to read:

742.13 Definitions.—As used in ss. 742.125-742.175 ~~742.11-742.17~~, the term:

(1) “Assisted reproductive technology” means those procreative procedures which involve the laboratory handling of human eggs or preembryos, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear stage transfer, tubal embryo transfer, and zygote intrafallopian transfer.

(2) “Commissioning couple” means the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents.

(3) “Egg” means the unfertilized female reproductive cell.

(4) “Fertilization” means the initial union of an egg and sperm.

(5) “Gestational surrogate” means a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

(6) “Gestational surrogacy” means a state that results from a process in which a commissioning couple’s eggs or sperm, or both, are mixed in vitro and the resulting preembryo is implanted within another woman’s body.

590-01086B-10

20107062

59 (7) "Gestational surrogacy contract" means a written
60 agreement between the gestational surrogate and the
61 commissioning couple.

62 (8) "Gamete intrafallopian transfer" means the direct
63 transfer of eggs and sperm into the fallopian tube prior to
64 fertilization.

65 (9) "Implantation" means the event that occurs when a
66 fertilized egg adheres to the uterine wall for nourishment.

67 (10) "In vitro" refers to a laboratory procedure performed
68 in an artificial environment outside a woman's body.

69 (11) "In vitro fertilization embryo transfer" means the
70 transfer of an in vitro fertilized preembryo into a woman's
71 uterus.

72 (12) "Preembryo" means the product of fertilization of an
73 egg by a sperm until the appearance of the embryonic axis.

74 (13) "Pronuclear stage transfer" or "zygote intrafallopian
75 transfer" means the transfer of an in vitro fertilized preembryo
76 into the fallopian tube before cell division takes place.

77 (14) "Sperm" means the male reproductive cell.

78 (15) "Tubal embryo transfer" means the transfer of a
79 dividing, in vitro fertilized preembryo into the fallopian tube.

80 Section 3. Section 742.14, Florida Statutes, is amended to
81 read:

82 742.14 Donation of eggs, sperm, or preembryos.—The donor of
83 any egg, sperm, or preembryo, other than the commissioning
84 couple or a father who has executed a preplanned adoption
85 agreement under s. 63.213 ~~63.212~~, shall relinquish all maternal
86 or paternal rights and obligations with respect to the donation
87 or the resulting children. Only reasonable compensation directly

590-01086B-10

20107062__

88 related to the donation of eggs, sperm, and preembryos shall be
89 permitted.

90 Section 4. Section 742.175, Florida Statutes, is created to
91 read:

92 742.175 Assisted reproductive technology agencies;
93 requirements; prohibited acts; penalties; remedies.-

94 (1) DEFINITIONS.-For purposes of this section, the term:

95 (a) "Assisted reproductive technology agency" or "agency"
96 means any organization or individual who provides database,
97 matching, and other third-party reproductive services on a
98 commercial or fee basis.

99 (b) "Donor" means an individual who produces eggs or sperm
100 used for assisted reproduction, whether or not for
101 consideration. The term does not include an intended mother or
102 intended father who provides gametes to be used for assisted
103 reproduction.

104 (c) "Participant" means an individual who provides a
105 biological or genetic component of assisted reproduction, a
106 commissioning couple, and, if appropriate, the spouse of a
107 gestational surrogate. Gestation is a biological component
108 within the meaning of this definition.

109 (d) "Third-party reproductive services" means services
110 related to the use of eggs, sperm, or embryos that have been
111 donated by a third person to enable an infertile couple to
112 become parents. The term also means services related to
113 gestational surrogacy arrangements.

114 (2) GENERAL REQUIREMENTS.-An agency shall:

115 (a) Require all participants to undergo a mental health
116 evaluation by a mental health professional licensed under

590-01086B-10

20107062

117 chapter 490 or chapter 491, and to undergo a subsequent
118 evaluation every 2 years thereafter as long as the participant
119 remains in the agency's database or is still contracting for
120 services with the agency. The agency shall request from the
121 mental health professional a written statement that the mental
122 health professional has met with the participant. The agency
123 shall retain a copy of the written statement for each
124 participant. The agency shall require a participant to sign a
125 release authorizing the agency to obtain the results of the
126 mental health evaluation.

127 (b) Require all donors and gestational surrogates to
128 undergo a medical evaluation by a physician licensed under
129 chapter 458 or chapter 459, and to undergo a subsequent
130 evaluation every 2 years thereafter as long as the donor or
131 gestational surrogate remains in the agency's database. The
132 agency shall request from the physician a written statement that
133 the physician has met with the donor or gestational surrogate.
134 The agency shall retain a copy of the written statement for each
135 donor or gestational surrogate. The agency shall require all
136 donors and gestational surrogates to sign a release authorizing
137 the agency to obtain the results of the medical evaluation.

138 (c) Obtain a criminal background check from the Department
139 of Law Enforcement for each participant, and obtain an updated
140 criminal background check every 2 years thereafter as long as
141 the participant remains in the agency's database or is still
142 contracting for services with the agency.

143 1. For donors and gestational surrogates, the agency shall
144 obtain the criminal background check prior to listing the donor
145 or gestational surrogate in the agency's database of potential

590-01086B-10

20107062

146 donors or gestational surrogates.

147 2. For a commissioning couple, the agency shall obtain the
148 criminal background check prior to entering into a contract with
149 the commissioning couple to provide database, matching, or other
150 third-party reproductive services.

151 3. When analyzing and evaluating the criminal background
152 check to determine whether to include the donor or gestational
153 surrogate in its database or whether to enter into a contract
154 with a commissioning couple, the agency shall give particular
155 emphasis to past activities involving children, including, but
156 not limited to, child-related criminal offenses or child abuse.

157 (d) Require a written contract as provided for in
158 subsection (5) between the commissioning couple and the agency.

159 (e) Require all gestational surrogacy contracts between the
160 commissioning couple and the gestational surrogate to be in
161 writing.

162 (f) Require the commissioning couple and gestational
163 surrogate to undergo a legal consultation with independent legal
164 counsel regarding the terms of the gestational surrogacy
165 contract and the potential legal consequences of the gestational
166 surrogacy contract.

167 (g) Keep and maintain all funds that are to be used for the
168 compensation of a gestational surrogate or donor in an account
169 that is separate and apart from the agency's business accounts
170 as specified in subsection (3).

171 (3) SECURITY REQUIREMENTS.—An agency that requires or
172 receives payment from a participant shall establish and maintain
173 a mechanism for ensuring that those funds are properly
174 maintained.

590-01086B-10

20107062

175 (a) An agency shall establish an escrow account with an
176 independent escrow agent and deposit into such account all
177 payments received by the agency from a participant. The agency
178 is not required to deposit into the escrow account payments
179 received from a participant which relate to the compensation and
180 operation of the agency.

181 (b) The agency shall establish the escrow account in a
182 Florida bank, Florida savings and loan association, or Florida
183 trust company, or with an attorney who is a member in good
184 standing with The Florida Bar.

185 (c) The escrow agent shall disburse funds from the escrow
186 account only upon receipt of an affidavit from the agency
187 specifying the purpose for which the disbursement is requested.
188 The escrow agent is entitled to rely upon the affidavit of the
189 agency and has no obligation to independently ascertain the
190 propriety of the requested disbursement so long as the escrow
191 agent has no actual knowledge that the affidavit is false in any
192 respect. The escrow agent shall retain all affidavits received
193 pursuant to this subsection for 5 years.

194 (d) The escrow agent shall maintain the account in such a
195 manner so that it is under the direct supervision and control of
196 the escrow agent. The escrow agent has a fiduciary duty to each
197 participant to maintain the escrow account in accordance with
198 good accounting principles and to release funds from escrow only
199 in accordance with this subsection. If the escrow agent receives
200 conflicting demands for the escrowed funds, the escrow agent
201 shall not disburse any funds and shall immediately notify the
202 agency and the affected participant of the dispute.

203 (e) If an agency fails to place funds in an escrow account

590-01086B-10

20107062

204 within 10 days after receipt of the funds, it is prima facie
205 evidence of a violation of this subsection.

206 (4) DISCLOSURE REQUIREMENTS.—An agency shall require all
207 participants to provide express and informed consent regarding
208 the proposed treatment, procedure, or process related to third-
209 party reproductive services they are about to undertake.

210 (a) An agency shall provide to a participant a written
211 document that is in plain language and includes, at a minimum,
212 the following:

213 1. A description of the known and potential risks,
214 consequences, and benefits of assisted reproductive technology.

215 2. An explanation that there may be foreseen or unforeseen
216 legal consequences and that it is advisable to seek independent
217 legal counsel.

218 3. A statement that all confidentiality protections apply
219 to the extent the law allows, and information about what the
220 confidentiality protections are.

221 4. A statement that a participant has access to all of his
222 or her medical information to the extent the law allows. An
223 agency may charge reasonable fees for copies of the record.

224 5. Disclosure that a commissioning couple has the right to
225 access a summary of medical and psychological information about
226 donors and gestational surrogates.

227 6. The policy of the agency, if applicable, regarding the
228 number of embryos transferred and any limitation on the number
229 of embryos transferred, as well as the existence of national
230 guidelines as published by the American Society for Reproductive
231 Medicine and the Society for Assisted Reproductive Technology.

232 7. Information generally explaining and clarifying parental

590-01086B-10

20107062__

233 rights of all participants.

234 8. A statement that all disclosures have been made pursuant
235 to this subsection.

236 (b) A participant gives express and informed consent by
237 signing the written document specified in paragraph (a). In
238 order for the express and informed consent to be valid, the
239 document must:

240 1. Be dated and signed by the agency and the participant;

241 2. Specify the length of time that the consent remains
242 valid; and

243 3. Advise the participant signing the document of the right
244 to receive a copy of it.

245 (5) CONTRACT REQUIREMENTS.—A contract entered into by an
246 agency and a participant for third-party reproductive services
247 must be in writing. The written contract must contain all
248 provisions, requirements, and prohibitions that are mandated by
249 this subsection before it is signed by the participant. The
250 agency shall give a copy of the signed contract to the
251 participant at the time the participant signs the contract.
252 Every contract for third-party reproductive services must:

253 (a) Set forth the participant's total payment obligation
254 for services to be received pursuant to the contract.

255 (b) Specifically provide the agreed-upon payment plan if
256 the contract calls for payment in installments.

257 (c) Set forth in specific terms all services being
258 contracted for.

259 (d) Prescribe in bold-faced type and under conspicuous
260 caption all cancellation provisions of the contract.

261 (e) Specify the length of time that the contract remains

590-01086B-10

20107062__

262 valid and the circumstances under which the contract is
263 terminated.

264 (6) ADVERTISING REQUIREMENTS.—

265 (a) An agency shall prominently display on all advertising
266 and promotional materials a statement that reads: "(NAME OF
267 AGENCY) is in full compliance with all statutory requirements
268 pursuant to section 742.175, Florida Statutes."

269 (b) All advertising and promotional materials for an agency
270 must include how many years the agency has been in business and
271 identify the name of any professional organizations of which the
272 agency is a member.

273 (c) An agency may not use advertisements or promotional
274 materials that tend to deceive prospective participants
275 concerning the personnel, equipment, services, success rates, or
276 fee structure of the agency.

277 (d) For the purposes of this subsection, advertising and
278 promotional materials include, but are not limited to, marquee,
279 poster, flier, newspaper, magazine, television, radio,
280 billboard, or Internet media.

281 (7) PROHIBITED ACTS.—It is a violation of this section for
282 an agency to:

283 (a) Operate in violation of, or fail to comply with, the
284 requirements of this section.

285 (b) Engage in third-party reproductive services if the
286 owner or operator of the agency has had any arrests, charges, or
287 convictions within the last 5 years for an economic crime or a
288 crime that directly relates to the practice of his or her
289 profession, other health-care-related matters, fraud,
290 embezzlement, violence, moral turpitude, or controlled

590-01086B-10

20107062

291 substances.

292 (c) Enlist or use the services of donors or gestational
293 surrogates who are not United States citizens or permanent
294 residents.

295 (8) PENALTIES; REMEDIES.—

296 (a) A violation of this section is a deceptive and unfair
297 trade practice and constitutes a violation of the Florida
298 Deceptive and Unfair Trade Practices Act under part II of
299 chapter 501.

300 (b) A person who has sustained economic loss or personal or
301 emotional injury due to the failure of an agency to comply with
302 this section has a civil cause of action for compensatory
303 damages, injunctive relief, or any other appropriate relief in
304 law or equity. Upon prevailing, the plaintiff may recover
305 reasonable attorney's fees and court costs. A defendant is
306 entitled to recover reasonable attorney's fees and court costs
307 upon a finding that the plaintiff raised a claim that was
308 without substantial fact or legal support.

309 (c) If an agency violates this section and the aggrieved
310 party reports the violation to the appropriate controlling
311 licensing authority, it is the intent of the Legislature that
312 the licensing authority take into consideration whether the
313 violation constitutes unprofessional conduct.

314 Section 5. This act shall take effect July 1, 2010.