

REFERENCE TITLE: **fertility fraud; civil; criminal action**

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1237

Introduced by
Senator Barto

AN ACT

**AMENDING TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-567; AMENDING TITLE 13, CHAPTER 24, ARIZONA REVISED
STATUTES, BY ADDING SECTION 13-2413; RELATING TO HEALTH CARE ACTIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5.1, article 1, Arizona Revised
3 Statutes, is amended by adding section 12-567, to read:

4 12-567. Civil fertility fraud; liability; statute of
5 limitations; definitions

6 A. A WOMAN WHO GIVES BIRTH TO A CHILD AFTER BEING TREATED FOR
7 INFERTILITY BY A PHYSICIAN, THE SPOUSE OF THE WOMAN, THE SURVIVING SPOUSE
8 OF THE WOMAN OR THE CHILD BORN AS A RESULT OF THE ACTIONS OF A PHYSICIAN
9 DESCRIBED IN THIS SECTION MAY BRING AN ACTION AGAINST A LICENSED HEALTH
10 CARE PROVIDER WHO KNOWINGLY OR INTENTIONALLY TREATED THE WOMAN FOR
11 INFERTILITY BY USING THE LICENSED HEALTH CARE PROVIDER'S OWN SPERMATOZOOM
12 OR OVUM WITHOUT THE PATIENT'S INFORMED WRITTEN CONSENT TO TREATMENT USING
13 THAT SPERMATOZOOM OR OVUM.

14 B. A DONOR OF HUMAN REPRODUCTIVE MATERIAL MAY BRING AN ACTION
15 AGAINST A LICENSED HEALTH CARE PROVIDER WHO TREATS A PATIENT FOR
16 INFERTILITY BY USING HUMAN REPRODUCTIVE MATERIAL DONATED BY THE DONOR AND
17 WHO KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT THE DONOR'S HUMAN
18 REPRODUCTIVE MATERIAL WAS USED EITHER:

19 1. WITHOUT THE DONOR'S CONSENT.

20 2. IN A MANNER OR TO AN EXTENT OTHER THAN THAT TO WHICH THE DONOR
21 CONSENTED.

22 C. A PLAINTIFF WHO PREVAILS IN AN ACTION UNDER THIS SECTION IS
23 ENTITLED TO REASONABLE ATTORNEY FEES, THE COSTS OF THE FERTILITY TREATMENT
24 IF THE ACTION IS BROUGHT UNDER SUBSECTION A OF THIS SECTION, AND EITHER:

25 1. COMPENSATORY AND PUNITIVE DAMAGES.

26 2. LIQUIDATED DAMAGES OF \$10,000.

27 D. A PERSON WHO BRINGS AN ACTION UNDER SUBSECTION A OF THIS SECTION
28 HAS A SEPARATE CAUSE OF ACTION FOR EACH CHILD BORN AS THE RESULT OF THE
29 FRAUDULENT FERTILITY TREATMENT. A PERSON WHO BRINGS AN ACTION UNDER
30 SUBSECTION B OF THIS SECTION HAS A SEPARATE CAUSE OF ACTION FOR EACH
31 INDIVIDUAL WHO RECEIVED FERTILITY TREATMENT WITH THE DONOR'S HUMAN
32 REPRODUCTIVE MATERIAL.

33 E. NOTWITHSTANDING ANY OTHER LAW AND EXCEPT AS PROVIDED IN
34 SUBSECTION F OF THIS SECTION, AN ACTION FOR CIVIL FERTILITY FRAUD MUST BE
35 COMMENCED NOT LATER THAN:

36 1. TEN YEARS AFTER THE EIGHTEENTH BIRTHDAY OF THE CHILD.

37 2. IF PARAGRAPH 1 OF THIS SUBSECTION DOES NOT APPLY, TWENTY YEARS
38 AFTER THE PROCEDURE WAS PERFORMED.

39 F. AN ACTION FOR CIVIL FERTILITY FRAUD THAT WOULD OTHERWISE BE
40 BARRED UNDER SUBSECTION E OF THIS SECTION MAY BE COMMENCED NOT LATER THAN
41 FIVE YEARS AFTER THE EARLIEST OF THE DATE THAT:

42 1. THE PERSON FIRST DISCOVERS EVIDENCE SUFFICIENT TO BRING AN
43 ACTION AGAINST THE DEFENDANT THROUGH DNA ANALYSIS.

1 2. THE PERSON FIRST BECOMES AWARE OF THE EXISTENCE OF A RECORDING
2 THAT PROVIDES EVIDENCE SUFFICIENT TO BRING AN ACTION AGAINST THE
3 DEFENDANT.
4 3. THE DEFENDANT CONFESSES TO THE OFFENSE.
5 G. FOR THE PURPOSES OF THIS SECTION:
6 1. "HUMAN REPRODUCTIVE MATERIAL" MEANS A HUMAN SPERMATOZOOM OR OVUM
7 OR A HUMAN ORGANISM AT ANY STAGE OF DEVELOPMENT FROM FERTILIZED OVUM TO
8 EMBRYO.
9 2. "PHYSICIAN" MEANS A PERSON WHO IS LICENSED PURSUANT TO TITLE 32,
10 CHAPTER 13 OR 17.
11 Sec. 2. Title 13, chapter 24, Arizona Revised Statutes, is amended
12 by adding section 13-2413, to read:
13 13-2413. Human reproductive material fraud; government
14 contract; classification; definition
15 A. A PERSON COMMITS HUMAN REPRODUCTIVE MATERIAL FRAUD BY
16 INTENTIONALLY OR KNOWINGLY PROVIDING FALSE INFORMATION RELATING TO HUMAN
17 REPRODUCTIVE MATERIAL AND A MEDICAL PROCEDURE, MEDICAL DEVICE OR DRUG TO A
18 GOVERNMENTAL ENTITY TO OBTAIN A CONTRACT FROM THE GOVERNMENTAL ENTITY AND
19 THE FALSE INFORMATION RESULTS IN A FINANCIAL LOSS TO THE GOVERNMENTAL
20 ENTITY.
21 B. HUMAN REPRODUCTIVE MATERIAL FRAUD IS A CLASS 6 FELONY.
22 C. FOR THE PURPOSES OF THIS SECTION, "HUMAN REPRODUCTIVE MATERIAL"
23 HAS THE SAME MEANING PRESCRIBED IN SECTION 12-567.