



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5622

Introduced 2/15/2012, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

New Act

Creates the Assisted Reproduction and Egg Donation Act in connection with methods of causing pregnancy through means other than by sexual intercourse. Contains provisions concerning rights of parentage in connection with assisted reproduction, eligibility for egg donation, requirements for egg donation contracts, the effect of dissolution of a marriage or civil union of the intended parents or their withdrawal of consent to assisted reproduction, duties of child support, the effects of noncompliance with the Act or a breach of an egg donation contract by the egg donor, damages, irrevocability of an egg donation, rulemaking by the Department of Public Health, and severability.

LRB097 18413 AJ0 63639 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning assisted reproduction.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Assisted Reproduction and Egg Donation Act.

6 Section 5. Definitions. As used in this Act:

7 "Assisted reproduction" means a method of causing
8 pregnancy through means other than by sexual intercourse. In
9 the foregoing context, the term includes, but is not limited
10 to:

- 11 (1) intrauterine insemination;
- 12 (2) donation of eggs;
- 13 (3) donation of embryos; and
- 14 (4) in-vitro fertilization and transfer of embryos.

15 "Child" means any child or children born from embryos
16 formed using an egg donor's egg.

17 "Compensation" means payment of any valuable consideration
18 for services in excess of reasonable medical and ancillary
19 costs.

20 "Egg donation" means the process by which a woman attempts
21 to contribute her egg for the purpose of in-vitro fertilization
22 or implantation in another whereby the egg donor retains no
23 parental rights, nor are parental obligations presumed.

1 "Egg donor" means a woman who contributes an egg or eggs
2 for the purpose of in-vitro fertilization or implantation in
3 another.

4 "Gamete" means either a sperm or an egg.

5 "Health care provider" means a person who is duly licensed
6 to provide health care services, including all medical,
7 psychological, or counseling professionals.

8 "Intended parent" means a person who either:

9 (1) enters into a contract with an egg donor, a sperm
10 donor, or a gestational surrogate pursuant to which he or
11 she will be the legal parent of the resulting child; in the
12 case of a married couple or a couple bound by civil union,
13 any reference to an intended parent includes both parents
14 for all purposes of this Act; the term includes the
15 intended mother, the intended father, or 2 intended
16 parents; or

17 (2) is the recipient of intrauterine insemination or
18 in-vitro fertilization and transfer of a pre-embryo, and
19 intends to be the legal parent of the resulting child.

20 "In-vitro fertilization" means all medical and laboratory
21 procedures that are necessary to effectuate the extracorporeal
22 fertilization of egg and sperm.

23 "Physician" means a person licensed to practice medicine in
24 all its branches in Illinois.

25 "Pre-embryo" means a fertilized egg prior to 14 days of
26 development.

1 "Pre-embryo transfer" means all medical and laboratory
2 procedures that are necessary to effectuate the transfer of a
3 pre-embryo into the uterine cavity.

4 Section 10. Rights of parentage.

5 (a) Except as provided in this Act or in the Gestational
6 Surrogacy Act, the woman who gives birth to a child is presumed
7 to be the mother of that child for purposes of Illinois law.

8 (b) In the case of an egg donation satisfying the
9 requirements set forth in this Act:

10 (1) If, under the supervision of a physician, the
11 intended parent or parents consent to assisted
12 reproduction with sperm donated by a man other than the
13 intended father, the intended father is treated in law as
14 if he were the natural father of the resulting child and
15 the child shall be considered the legal child of the
16 intended parent or parents for purposes of Illinois law
17 immediately upon the birth of the child.

18 (2) If, under the supervision of a physician, the
19 intended parent or parents consent to assisted
20 reproduction with one or more eggs donated by a woman other
21 than the intended mother and the intended mother does not
22 intend to be a gestational surrogate, the intended mother
23 is treated in law as if she were the natural mother of the
24 resulting child and the child shall be considered the
25 legitimate child of the intended parent or parents for

1 purposes of Illinois law immediately upon the birth of the
2 child.

3 (3) Neither the donor nor the donor's spouse or civil
4 union partner, if any, is a parent of the child conceived
5 by means of assisted reproduction satisfying the
6 requirements of this Act for purposes of Illinois law.

7 (4) A written contract meeting the requirements of
8 Section 20 and defining the rights and obligations of the
9 intended parent or parents and the donor must be signed by
10 all parties.

11 (c) The parties to an egg donation arrangement shall assume
12 the rights and obligations under subsections (a) and (b) of
13 this Section if the eligibility requirements set forth in
14 Section 15 are met.

15 (d) Failure of any party to sign a consent required under
16 this Act does not preclude a finding that the individual is a
17 parent of the resulting child.

18 Section 15. Eligibility for egg donation.

19 (a) An egg donor shall be deemed to have satisfied the
20 requirements of this Act if the following requirements are met
21 prior to the commencement of medical procedures in furtherance
22 of the egg donation other than medical or mental health
23 evaluations necessary to determine eligibility as contemplated
24 in this Act:

25 (1) She is at least 21 years of age.

1 (2) She has completed a medical evaluation and received
2 clearance as an appropriate participant from a qualified
3 physician.

4 (3) She has completed a mental health consultation and
5 is deemed an appropriate participant from a qualified
6 health care provider.

7 (4) She has undergone a legal consultation with
8 independent legal counsel regarding the terms of the egg
9 donation contract and the potential legal consequences of
10 the egg donation arrangement.

11 (b) An intended parent or parents shall be deemed to have
12 satisfied the requirements of this Act if the following
13 requirements are met prior to the commencement of medical
14 procedures in furtherance of the egg donation other than
15 medical or mental health consultations necessary to determine
16 eligibility as contemplated in this Act:

17 (1) The intended parent or parents are at least 21
18 years of age.

19 (2) The intended parent or parents have completed a
20 medical evaluation and received clearance as an
21 appropriate participant from a qualified physician.

22 (3) The intended parent or parents have completed a
23 mental health consultation with a qualified health care
24 provider regarding the risks and benefits of participating
25 in an egg donation arrangement.

26 (4) The intended parent or parents have completed a

1 legal consultation with independent legal counsel
2 regarding the terms of the egg donation contract and the
3 potential legal consequences of the egg donation
4 arrangement.

5 Section 20. Requirements for an egg donation contract.

6 (a) An egg donation contract shall be presumed enforceable
7 for purposes of Illinois law only if it meets the contractual
8 requirements set forth in subsection (b) of this Section and it
9 contains at a minimum each of the terms set forth in subsection
10 (b) of this Section.

11 (b) An egg donation contract shall meet the following
12 requirements:

13 (1) It shall be in writing.

14 (2) It shall be executed prior to the commencement of
15 any medical procedure in furtherance of the egg donation
16 other than medical or mental health evaluations or
17 consultations necessary to determine eligibility of the
18 parties pursuant to Section 15:

19 (A) By a donor meeting the eligibility
20 requirements of Section 15.

21 (B) By the intended parent or parents meeting the
22 eligibility requirements of Section 15. If the
23 intended parents intend to jointly parent any child
24 resulting from the egg donation, they both must sign
25 the egg donation contract regardless of their marital

1 or civil union status.

2 (C) Both the donor and the intended parent or
3 parents shall have been represented by separate legal
4 counsel in all matters concerning the egg donation and
5 the egg donation contract.

6 (3) An egg donation contract shall provide for:

7 (A) The specific terms of agreement regarding the
8 following items:

9 (i) The donor's participation in medical
10 testing and procedures that the physician
11 recommends or the intended parent or parents may
12 request.

13 (ii) The donor's abstention from activities
14 that the intended parent or parents or physician
15 reasonably believes may cause harm to a fetus and
16 the future health of the child through the date of
17 the retrieval procedure.

18 (iii) The terms of payment of reasonable
19 compensation, if any.

20 (iv) The payment of the medical, legal, or
21 other professional expenses related to the egg
22 donation and the egg donation contract.

23 (v) The acknowledgment of the donor and the
24 intended parent or parents that he or she received
25 information about the legal, financial (including
26 information regarding the availability of health

1 insurance related to complications associated with
2 egg donation procedures), and contractual rights,
3 expectations, penalties, and obligations of the
4 egg donation agreement.

5 (B) The express written agreement of the donor:

6 (i) To follow the medical instructions
7 provided by the treating physician.

8 (ii) For relinquishment of any claim to a child
9 born as a result of the egg donation arrangement.

10 (iii) For relinquishment of any claim to any
11 embryo formed pursuant to the egg donation,
12 subject to limitations regarding donation of
13 embryos to any other individual for reproductive
14 use or other disposition restrictions as set forth
15 in the contract and agreed upon by all parties.

16 (C) If the donor is married or bound by civil
17 union:

18 (i) The donor's husband or partner shall not be
19 a parent of the child.

20 (ii) The donor's husband or partner shall not
21 have any claim to any child or embryo resulting
22 from the egg donation arrangement.

23 (iii) The donor's husband or partner shall not
24 have standing to bring any claim for damages
25 against the intended parent or parents from any
26 liability resulting from his or her wife's or

1 partner's participation in an egg donation
2 arrangement meeting the requirements of this Act.

3 (D) The express written agreement of the intended
4 parent or parents to:

5 (a) Accept all parental obligations for any
6 child born as a result of the egg donation.

7 (b) Assume sole responsibility for the duty to
8 support the child or children.

9 (c) Assume responsibility for the storage and
10 subsequent disposition of embryos formed and
11 cryopreserved as a result of the egg donation,
12 subject to limitations regarding donation of
13 embryos to any other individual for reproductive
14 use or other disposition restrictions as set forth
15 in the contract and agreed upon by all parties.

16 (c) A donor may condition donation on a reasonable
17 assurance of anonymity so long as non-identifying health
18 information is provided to the intended parent or parents.

19 (d) A donor who has authorized the limited release of
20 identifying health or other information related to her health
21 history may not revoke that permission once the retrieval
22 procedure has occurred and the donor's egg or eggs have been
23 combined with sperm.

24 (e) If any of the requirements of this Section are not met,
25 the intended parent or parents shall be presumed to be the
26 legal parents of the child unless a court of competent

1 jurisdiction determines otherwise based on evidence of the
2 parties' intent.

3 Section 25. Effect of dissolution of marriage or civil
4 union of intended parents or withdrawal of consent.

5 (a) If a marriage or civil union is dissolved by court
6 order before a pre-embryo or embryo is transferred to a
7 recipient for the purpose of reproduction, the former spouse or
8 partner is not a parent of the resulting child unless the
9 former spouse or partner consented in writing that assisted
10 reproduction may occur after a divorce or dissolution and the
11 former spouse or partner consents to be a legal parent of the
12 child.

13 (b) The consent of a woman or a man to assisted
14 reproduction may be withdrawn by that individual in writing at
15 any time before a pre-embryo or embryo is transferred for the
16 purpose of reproduction. An individual who withdraws consent
17 under this Section prior to a transfer is not a parent of the
18 resulting child.

19 (c) If the parties are legally separated or a divorce
20 action or a dissolution action is pending or granted, that
21 shall be deemed to be a withdrawal of consent and any directive
22 executed prior to the separation of filing shall not be
23 honored.

24 Section 30. Duty to support.

1 (a) Any person who is considered to be the parent of a
2 child pursuant to this Act is obligated to support the child.

3 (b) The breach of the egg donation contract by the intended
4 parent or parents does not relieve the intended parent or
5 parents of the support obligations imposed by this Act.

6 (c) An egg donor may be liable for child support only if
7 she fails to enter into a legal agreement with the intended
8 parent or parents in which the intended parent or parents agree
9 to assume all rights and responsibilities for any resulting
10 child, and the egg donor relinquishes her rights to any
11 gametes, resulting embryos, or children.

12 Section 35. Noncompliance. Noncompliance by the donor or
13 the intended parent or parents occurs when that party breaches
14 a provision of the egg donation contract.

15 Section 40. Effect of noncompliance.

16 (a) Except as otherwise provided in this Act, in the event
17 of noncompliance with the requirements of this Act, a court of
18 competent jurisdiction shall determine the respective rights
19 and obligations of the parties.

20 (b) There shall be no specific performance remedy available
21 for a breach by the donor of an egg donation contract term that
22 requires her to donate her eggs to another person if the breach
23 occurs prior to the time the donor's egg or eggs have been
24 fertilized with sperm.

1 Section 45. Damages. In the event of noncompliance:

2 (a) Except as expressly provided in the egg donation
3 contract, the intended parent or parents are entitled to all
4 remedies available at law or in equity.

5 (b) Except as expressly provided in the egg donation
6 contract, the donor is entitled to all remedies available at
7 law or in equity.

8 Section 50. Irrevocability. No action to invalidate an egg
9 donation meeting the requirements of this Act shall be
10 commenced at any time after the point at which the contract
11 meeting the requirements of this Act deems the egg donation
12 irrevocable. No challenge to the rights of parentage
13 established pursuant to this Act and the Illinois Parentage Act
14 of 1984 shall be commenced from the moment of birth of the
15 child.

16 Section 55. Rulemaking. The Department of Public Health may
17 adopt rules pertaining to the required medical and mental
18 health evaluations for the parties. Until the Department of
19 Public Health adopts rules, medical and mental health
20 evaluations and procedures shall be conducted in accordance
21 with the recommended guidelines published by the American
22 Society for Reproductive Medicine and the American College of
23 Obstetricians and Gynecologists. The rules may adopt these

1 guidelines or others by reference.

2 Section 60. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.