

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 101 (Delegate Pena-Melnyk, *et al.*)
Health and Government Operations

Finance

Health - General - Posthumous Use of Donor Sperm and Eggs

This bill prohibits a person from using, for the purpose of assisted reproduction, a *known* donor's sperm or eggs after the donor's death without the donor's previous consent, as specified in the bill, if (1) the person knows that the donor died and did not consent to such use; or (2) the donor or the intended parent receives any remuneration for the donation or use of the sperm or eggs. A person that violates this prohibition is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000 for a first offense and a fine of up to \$5,000 for a second or subsequent offense.

The bill also expands, for the purposes of specified provisions of law regarding inheritance, the definition of a "child" to include a child conceived from the genetic material of a person after the death of the person if the person consented in a written record (1) to such use; and (2) to be the parent of such a child. The bill specifies that a relation who is posthumously conceived (but born within two years after the decedent's death) may be considered as entitled to distribution in the relation's own right if the decedent/person had consented in a written record (1) to use of the decedent's genetic material for posthumous conception; and (2) to be the parent of a child posthumously conceived using the person's genetic material.

Fiscal Summary

State Effect: The bill's criminal penalty provisions are not expected to materially affect State finances.

Local Effect: The bill's criminal penalty provisions are not expected to materially affect local finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background:

Assisted Reproduction

The first pregnancy achieved through the use of a donor egg was reported in 1984, while the first report of artificial insemination through the use of donor sperm was published in 1945. Both donor eggs and donor sperm can be cryogenically preserved for years; in fact, there have been media reports of live births resulting from sperm that had been donated more than 20 years earlier. Sperm can also be harvested from a deceased donor within 24 to 36 hours of death.

In recent years, advances in reproductive technology have led courts to confront a variety of legal questions that remain unsettled. Recent cases regarding children conceived from posthumously donated sperm have generally centered on either inheritance or Social Security benefits.

No State law or regulation addresses the posthumous use of donor sperm and eggs. However, legislation introduced in 2003 (HB 481) and 2001 (HB 723) would have required health care facilities and providers to require a written advance directive for the disposition of cryogenically preserved eggs, sperm, or embryos.

Inheritance

For the purposes of determining relationship for purposes of inheritance, a “child” includes a “legitimate child” (*i.e.*, a child born or conceived during a marriage or conceived by artificial insemination of a married woman), an adopted child, and an “illegitimate child” (*i.e.*, a child born to parents who have not been married). A child does not include a stepchild, a foster child, or a grandchild or a more remote descendant.

With regard to intestate succession, a child of the decedent who is conceived before the death of the decedent, but born afterwards, must inherit as if the child had been born in the lifetime of the decedent. No other after-born relation may be considered as entitled to distribution in the relation’s own right.

Additional Information

Prior Introductions: None.

Cross File: SB 71 (Senator Kelley) - Finance.

Information Source(s): American Society for Reproductive Medicine, BBC News, Human Reproduction Journal, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2012
ncs/mwc Revised - House Third Reader - March 23, 2012

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