

311.373 Definitions -- Fraudulent assisted reproduction -- Cause of action -- Damages -- Statute of limitations -- Penalty.

- (1) For purposes of this section:
 - (a) "Assisted reproduction" means a method of causing pregnancy other than through sexual intercourse, including but not limited to:
 1. Intrauterine insemination;
 2. In vitro fertilization and transfer of embryos; and
 3. Intracytoplasmic sperm injection;
 - (b) "Health care provider" means an individual licensed by the Kentucky Board of Medical Licensure or the Kentucky Board of Nursing, pursuant to KRS Chapters 311 and 314; and
 - (c) "Human reproductive material" means a human sperm or ovum, or a human organism at any stage of development from fertilized ovum to embryo.
- (2) A person is guilty of fraudulent assisted reproduction when he or she is a health care provider performing an assisted reproduction procedure on a patient and:
 - (a) Knowingly causes the use of human reproductive material from a donor whom the patient did not give written consent to receive it from; or
 - (b) Intentionally causes the use of his or her own human reproductive material without the patient's knowledge and written consent.
- (3)
 - (a) The patient who undergoes an assisted reproduction procedure in violation of subsection (2) of this section;
 - (b) The patient's surviving spouse or partner listed on the child's birth certificate;
 - (c) The child conceived through assisted reproduction as a result of a violation of subsection (2) of this section; or
 - (d) A donor whose human reproductive material is used without the donor's consent or in a manner inconsistent with the donor's consent;shall have a civil cause of action against any health care provider, the health care provider's employer, or both, for a violation of the provisions of subsection (2) of this section.
- (4) A civil action may be maintained under this section whether or not the person alleged to have violated subsection (2) of this section has been charged or convicted of the alleged crime.
- (5) Liability under this section shall include:
 - (a) Liquidated damages of ten thousand dollars (\$10,000) plus the costs of the fertility treatment and reasonable attorney's fees; or
 - (b) Compensatory and punitive damages including the costs of the fertility treatment plus the costs of the action and reasonable attorney's fees.
- (6) An action under this section shall be commenced no later than five (5) years after:
 - (a) The eighteenth birthday of the child conceived through the fraudulent assisted reproduction; or

- (b) The earliest of the dates when:
 - 1. The person first discovers evidence against the defendant through deoxyribonucleic acid (DNA) analysis;
 - 2. The person first becomes aware of the existence of a record that provides evidence against the defendant; or
 - 3. The defendant confesses to the offense.
- (7) A violation of subsection (2) of this section is a Class D felony.

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