

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 174

AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-11-2-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 15. (a) Except as provided in subsection (b), an action for civil fertility fraud (IC 34-24-5) must be commenced not later than:**

- (1) ten (10) years after the eighteenth birthday of the child; or**
- (2) if subdivision (1) does not apply, twenty (20) years after the procedure was performed.**

(b) An action for civil fertility fraud that would otherwise be barred under this section may be commenced not later than five (5) years after the earliest of the date on which:

- (1) the person first discovers evidence sufficient to bring an action against the defendant through DNA (deoxyribonucleic acid) analysis;**
- (2) the person first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to bring an action against the defendant;**
- or**
- (3) the defendant confesses to the offense.**

SECTION 2. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 5. Civil Fertility Fraud

SEA 174 — Concur



Sec. 1. The following definitions apply throughout this chapter:

- (1) "Human reproductive material" means:**
 - (A) a human spermatozoon or ovum; or**
 - (B) a human organism at any stage of development from fertilized ovum to embryo.**
- (2) "Physician" means a physician licensed under IC 25-22.5.**
- (3) "Health care provider" has the meaning set forth in IC 34-30-12.5-2.**

Sec. 2. A:

- (1) woman who gives birth to a child after being treated for infertility by a physician;**
- (2) spouse of the woman;**
- (3) surviving spouse of the woman; or**
- (4) child born as a result of the actions of a physician described in this chapter;**

may bring an action against a health care provider who knowingly or intentionally treated the woman for infertility by using the health care provider's own spermatozoon or ovum, without the patient's informed written consent to treatment using the spermatozoon or ovum.

Sec. 3. A donor of human reproductive material may bring an action against a health care provider who:

- (1) treats a patient for infertility by using human reproductive material donated by the donor; and**
- (2) knows or reasonably should have known that the human reproductive material was used:**
 - (A) without the donor's consent; or**
 - (B) in a manner or to an extent other than that to which the donor consented.**

Sec. 4. A plaintiff who prevails in an action under this chapter is entitled to reasonable attorney's fees, the costs of the fertility treatment (in an action brought under section 2 of this chapter), and:

- (1) compensatory and punitive damages; or**
- (2) liquidated damages of ten thousand dollars (\$10,000).**

Sec. 5. (a) A person who brings an action under section 2 of this chapter has a separate cause of action for each child born as the result of the fraudulent fertility treatment.

(b) A person who brings an action under section 3 of this chapter has a separate cause of action for each individual who received fertility treatment with the donor's human reproductive material.



Sec. 6. Nothing in this chapter may be construed to prohibit a person from pursuing any other remedy provided by law.

SECTION 3. IC 35-43-5-3, AS AMENDED BY P.L.85-2017, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A person who:

- (1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;
- (2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;
- (3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;
- (4) knowingly or intentionally, in the regular course of business, either:
 - (A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or
 - (B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;
- (5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;
- (6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;
- (7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;
- (8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;
- (9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;
- (10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5;
- (11) knowingly and intentionally defrauds another person



furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service; or
 (12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;

commits deception, a Class A misdemeanor, **except as provided in subsection (b).**

(b) However, An offense under:

(1) ~~subdivision (12)~~ subsection (a)(12) is a Level 6 felony if the provision of false information results in financial loss to the governmental entity; **and**

(2) subsection (a)(6) is a Level 6 felony if the misrepresentation relates to:

(A) a medical procedure, medical device, or drug; and

(B) human reproductive material (as defined in IC 34-24-5-1.

(c) In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

(d) A person who knowingly or intentionally falsely represents:

(1) any entity as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a women-owned business enterprise (as defined in IC 5-16-6.5-3);

in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or

(2) an entity with which the person will subcontract all or part of a contract with a public agency (as defined in IC 5-16-6.5-2) as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a women-owned business enterprise (as defined in IC 5-16-6.5-3);

in order to qualify for certification as an eligible bidder under a



program that is conducted by a public agency designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services;

commits a Level 6 felony.

SECTION 4. [EFFECTIVE JULY 1, 2019] (a) The legislative council is urged to assign to an appropriate study committee the topic of fertility laws, including gestational surrogacy.

(b) This SECTION expires January 1, 2020.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 174 — Concur

